

# **Exhibit A**

**TRADE AGREEMENT**

**EFFECTIVE SEPTEMBER 21, 2020**

**between**

**ASSOCIATED MUSICIANS OF GREATER NEW YORK  
LOCAL 802  
AMERICAN FEDERATION OF MUSICIANS**

**and**

**THE PHILHARMONIC-SYMPHONY SOCIETY  
OF NEW YORK, INC.**

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AGREEMENT made as of the 21st day of September, 2020, between ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, AMERICAN FEDERATION OF MUSICIANS, ("the Union"), having its principal place of business at 322 West 48th Street, New York, New York 10036, and the PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC. ("the Society"), having its principal place of business at David Geffen Hall, 10 Lincoln Center Plaza, New York, New York 10023.

The parties hereto desire to enter into this Agreement concerning wages, hours, and other conditions of employment of the Musicians employed by the Society. The parties hereto desire that this Agreement promote the principles of fair practice in the employment of Musicians and be consistent with the rules and by-laws of the Union and of the American Federation of Musicians and with the economic and other limitations of the non-profit, public-supported nature of the Society. In consideration of the mutual covenant herein contained, it is agreed as follows:

## **ARTICLE I: UNION RECOGNITION**

The parties agree that during the term of this Agreement it shall be a condition of employment that all Musicians covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the date of execution of this Agreement shall, on the thirtieth (30th) day following its execution, become and remain members in good standing; that all employees covered by this Agreement and hired on or after the date of its execution shall, on the thirtieth (30th) day following the beginning of such employment, become and remain members in good standing in the Union.

## **ARTICLE II: TERM OF AGREEMENT**

**The term of this agreement shall be four (4) years, from September 21, 2020 through September 20, 2024.**

## **ARTICLE III: WEEKS OF EMPLOYMENT**

### **A. WEEKS OF EMPLOYMENT AND RELIEF**

Members of the Orchestra shall be employed for fifty-two (52) weeks in each year of the term of the Agreement, during which the Society may schedule whatever activities of the Orchestra it may determine, both in the United States and abroad, including but not limited to a subscription season, tours, "Education and Community Engagement," "Festival," "Movie," "Rehearsal," "Residence," and "Vacation" weeks.

### **B. OPTIONAL WEEKS**

During each year of this Agreement each Musician shall be entitled to request weeks as Optional Weeks during which they may take Leave as defined herein. The Society and the Player concerned may mutually agree upon what week(s) or individual services shall be taken by that Player during each year as Leave. Each Optional Week shall be defined as seven consecutive days commencing on Monday, Tuesday, or Wednesday or such other period as is mutually agreed upon in each case, it being specifically understood that the Society may require the playing or not playing of certain services as a condition of granting the requested optional time off.

It is understood that the Society has the right to refuse such requests upon reasonable grounds relating to the artistic needs of the Society and/or relating to a limitation of the number of optional weeks for any one Musician. For example, but without limiting the generality of the foregoing, refusals of requests may be based upon considerations involving recording, broadcasting, concert preparation, tour and repertoire requirements. The activity of the Musician during the requested optional weeks may be a factor in the consideration of the Musician's request. The Society will use its best efforts to notify the Musician of its approval or disapproval within 14 days after receipt of the request, and if it disapproves, will give the reasons therefor.

At the beginning of each season (approximately October 15 for the New York Subscription Season), in the spring (approximately April 15) for the non-subscription period, and at such other times as are mutually agreed with the Orchestra Committee, all requests for Optional Weeks or Services will be considered together. Decisions on those requests will be made in the shortest feasible time, and future requests will be considered in light of decisions already made on previously submitted requests. If there is a conflict within a section, priority shall be given initially to seniority; thereafter the leave time shall be on a rotating basis. Any refusal of a request may be referred by the Player within five (5) days of receipt of the refusal to a joint Staff-Player committee. Such committee shall be comprised of three members of the Staff and two representatives of the Players, and the majority decision of this Committee shall be final and binding upon the Player concerned and not subject to the arbitration provision of this Agreement. A Player granted a Leave:

1. shall forego their contract salary, and any applicable per diem allowance, for the length of their Leave; or, in the case of a Player taking individual services, shall forego their salary for, and any applicable per diem allowance occasioned by, the particular service or services from which the Player has been excused;
2. shall not participate as a member of the Orchestra with respect to any recording or broadcasting sessions during the period of their Leave; and
3. shall understand that they may receive less than the contractual annual minimum base salary and less than the media guarantee in any year in which they are granted a Leave.

If a Musician requests to be re-engaged after being granted optional time off, it shall be allowed if a substitute Player has not been engaged. The Society is not required to replace an Orchestra member during Optional Weeks.

#### C. VACATION

The Society agrees to grant to its Orchestra members nine (9) weeks' vacation in each year of this Agreement, and to pay each Orchestra member their regular weekly salary therefor. One week of this vacation will be scheduled at Christmas time, and four consecutive weeks at such time between June 1st and October 1st as the Society in its sole discretion shall determine. At least three (3) weeks of vacation shall occur between June 15 and Labor Day and there shall be no fewer than two (2) consecutive weeks of vacation between June 28 and Labor Day.

The Society intends to schedule three weeks of vacation between June 28 and Labor Day whenever possible, subject to performance schedules.

The eighth vacation week shall each consist of seven (7) days to be scheduled as the Society in its sole discretion shall determine in one of the following ways: either (a) as one calendar week; or (b) as seven consecutive days during a two-calendar week period with the understanding that the services in the seven non-vacation days will be considered as one work week; or (c) as seven days contiguous to one or more vacation weeks (i.e., one or more days preceding a vacation week[s] plus the balance of the seven days at the conclusion of the vacation week[s], it being understood that the services in the other seven non-vacation days in the week before and the week after the said vacation week[s] will be considered as one work week.)

##### 1. Relief Week

The ninth vacation week may be scheduled as a "relief week" on an individual basis for each member of the Orchestra.

Such "relief weeks" will generally occur by reason of repertoire such that the other members of each section will make themselves available so that this relief can be afforded consistent with their individual contracts or current practice in the section. This week shall generally be the "six day variety" beginning with Tuesday morning off, playing that Tuesday evening, and returning to work the following Tuesday morning with that Tuesday evening off. Once granted, relief weeks off may not be changed by the Society later than two months prior to the beginning of the scheduled relief week. Each Musician absent on a relief week will be paid for all services including extra services, overtime, radio broadcasts, and television activities, as if that Musician were present for those services, with the exception of recording services, for which the Musician will receive a minimum two-hour payment for each recording session.

The ninth (9th) week vacation will be either a dark week, or a split vacation week.

##### 2. Paid Leave

All members of the orchestra will receive no more than three (3) weeks of paid leave (in excess of vacation and break weeks) through relief weeks or optional weeks in individual agreements. Leave for "on call" instrumentation purposes will continue to be paid. Any relief weeks earned through excess education/community engagement services are excluded from this cap. Commencing on September 21, 2023, musicians will have the option of negotiating an alternative number of paid leave weeks in their individual agreements.

### ARTICLE IV: SCALE OF PAY

#### A. PAYROLL

Effective with the week including August 2, 2021, payroll will move to an every-other-week schedule, with a pay date of Friday. Except for tours which include mainland China (including Hong Kong), advance pay for touring and vacation will be discontinued.

**B. MINIMUM SCALE**

Minimum scale of pay (not including rotation pay) per musician during the term of this agreement is \$2,952. Orchestra members shall be paid at the following percentages of the minimum scale:

September 21, 2020	75%
September 21, 2023	80%
March 21, 2024	90%

Other wage-based rates shall be applied as per past practice based on the reduced rates in effect in accordance with this section.

**C. LONGEVITY PAY**

There shall be longevity pay for each Musician, in addition to their regular weekly salary, at 75% of the following rates:

5 – 9	\$104.81
10 – 14	\$139.74
15 – 19	\$174.66
20 – 24	\$209.56
25+ years	\$244.51

Contractual increases in seniority pay based on attainment of the next tier of seniority will be maintained throughout the Term, subject to the rates and reduction specified above.

**D. OVERSCALE PAY**

Orchestra members shall be paid at the following percentages of their contractual overscale rates in effect as of March 1, 2020:

September 21, 2020	35%
September 21, 2023	40%
March 21, 2024	45%

Previously negotiated overscale increases (subject to the reductions, above) will be maintained throughout the Term.

**E. COMPENSATION ADJUSTMENT**

1. The following financial projections shall be used for the compensation adjustment formula (\$ millions):

FY:	20/21	21/22	22/23	23/24
Subscription Series				
Ticketing & Total				
Fee Revenue	\$0	\$10.4	\$21.8	\$18.7
6% Endowment				
Draw	\$10.6	\$10.7	\$11.0	\$11.3
Gov't Assistance	\$3.7	\$0	\$0	\$0
Orchestra Pension				
Contributions	\$4.6	\$5.2	\$5.3	\$5.4
Forward Fund Usage	\$16.2	\$20.9	\$7.6	\$10.6

In the table above, "6% Endowment Draw" is based on current policy of 12-quarter rolling average.

Projected Forward Fund usage is exactly equivalent to projected cash deficits, and actual Forward Fund usage is exactly equivalent to actual cash deficits, regardless of how much of the Forward Fund is actually raised or how much may be released as recognized revenue each year to offset the operating deficit. Cash deficits are defined as GAAP based operating results as shown in the unrestricted operating column of the Statement of Activities included in the Society's Financial Statements, plus

cash spent on non-DGH capital projects, the net difference between GAAP-based pension expense and actual cash pension contributions, and interest and issuance costs for the DGH project financing facility.

2. Subject to paragraph 3, the compensation adjustment formula shall be as follows for the FY 20/21 and 21/22 seasons. On October 15, 2022, Musicians will be eligible for a lump sum bonus equal to 50% of the net total budgetary improvement, ("50% of the net total budgetary improvement" is referred to as NBI), if any, of the following budget component net totals during the two seasons (FY 20/21 and 21/22):
  - a. Subscription Series ticketing and total fee revenue
  - b. 6% Endowment Draw
  - c. Government relief assistance
  - d. Orchestra Pension Contributions
  - e. Musician staffing savings, net of replacement costs if fewer than 90 Musicians (savings analysis to be provided separately)
3. Calculation of the Forward Fund Reduction Amount (FFRA) and Payment Methodology

The FFRA, or reduction in cash deficit, shall be the difference between the actual Forward Fund usage in a year and the projected Forward Fund usage in item 1, net of any carry forward of accumulated excess usage in prior years ("Carry Forward"). If the FFRA is greater than NBI, the lump sum bonus payment will be the greater of NBI or 50% of the FFRA. If the FFRA is less than NBI, the lump sum bonus payment will be the lesser of the amount by which the NBI exceeds the FFRA, or \$750,000 even if there is no FFRA. Lump sum bonus payments of up to \$750,000 when no FFRA is present will not be treated as excess Forward Fund usage in the Carry Forward noted in this paragraph. The intended workings of this paragraph are illustrated in the examples provided in the Memorandum of Understanding dated December 1, 2020. **Memorandum of Understanding attached as Exhibit A]**

4. For the Fiscal Year 2022/23 and 2023/24 seasons, the procedure and calculation shall be as follows:

On October 15 following the conclusion of each fiscal year (e.g., for the FY 22/23 season, on October 15, 2023) musicians will be eligible for a lump sum payment as described in items 2 and 3, but based on each year's annual results, rather than the two-year total for FYs 20/21 and 21/22.

5. Bonus monies from the formula in items 2-4 will be applied first to weekly scale wages until 100% of scale is reached; thereafter, the Society and Orchestra Committee, in consultation with the IFA, will jointly determine the allocation of additional compensation between seniority pay and overscale.
6. Independent Financial Advisor

The parties agree to retain Eugene Keilin as the Independent Financial Analyst ("IFA") for the duration of this Agreement to provide a regular, independent analysis of all financial information relevant to Musician compensation under this Agreement.

- a. The IFA will have access to all financial documents and information relevant to the calculation of the amounts due under the additional compensation provision. Such information will be the same as or consistent with the information provided to the Board of Directors. Subject to a continuation of the existing confidentiality agreement, the IFA is authorized to share this information with the Philharmonic Orchestra Committee on at least a quarterly basis.
- b. The Philharmonic and the IFA shall agree upon the IFA's compensation for services rendered under this Agreement.
- c. If Mr. Keilin is unable to carry out his responsibilities under this Agreement for any reason, the Philharmonic and the Philharmonic Orchestra Committee will agree on another individual to act as the IFA.

## ARTICLE V: MINIMUM EMPLOYMENT

The number of Musicians to be employed by the Society and to constitute the personnel of the New York Philharmonic Orchestra shall not be less than one hundred and six (106), except as provided in Article XXIV, below.

## ARTICLE VI: SERVICES

## A. NEW YORK SUBSCRIPTION WEEKS (weeks where one or more of the regular subscription concerts are given):

1. The basic work week shall not exceed, in any one week, four (4) concerts plus four (4) rehearsals of two and one-half (2½) hours' duration each, except when the Orchestra gives its consent to a schedule containing fewer concerts and more rehearsals.
2. There shall be no weeks of twelve (12) services.
3. There shall be no weeks of eleven (11) services except weeks which contain one or more media services.
4. There shall be a maximum of eight (8) weeks of ten (10) services not counting weeks which contain one or more media services. In each contract year, there shall be no more than one instance of two consecutive 10-service weeks. The programming and scheduling of such weeks shall be subject to consultation with the Artistic Committee.
5. During the New York Subscription season the schedule shall be arranged so as to provide the maximum number of periods of two consecutive days off. The number of such periods each season shall be no fewer than fifteen (15), with no more than eight (8) six (6) day weeks. or the purpose of this calculation, days of only media service may be counted as free days. The Society will make best efforts to schedule more than fifteen (15) two-consecutive days off per subscription season.

6. Working Mondays

The Society agrees to make best efforts to avoid instances of three (3) consecutive working Mondays in each New York subscription season covered by this agreement. If a situation arises in which it is necessary to have 3 consecutive working Mondays, the Society will first consult with the Orchestra Committee.

7. The Friday after Thanksgiving shall have only an evening concert.
8. A total of eight (8) "free" services with no more than three (3) fundraising concerts may be scheduled in each season. Schedule and program are subject to Artistic Advisory Committee approval. Rehearsals in excess of these limits shall be paid at the prevailing rates herein.
9. Each season, up to five (5) extra concert or rehearsal services in excess of the basic workweek will be included in the base weekly salary. This provision will sunset on 9/20/2024.

In addition to the above, an average of two (2) times per season (8 times over a four-year contract, ten (10) times over a five-year contract), with a maximum of three (3) weeks per season, there may be five (5) concerts and three (3) rehearsals in a subscription week with no extra concert payment. These concerts should be the same program. This provision excludes Young People's Concerts and School Day concerts but includes Saturday matinees. In addition, effective 9/21/18:

- a. Two times per season, up to 5 rehearsals and 3 concerts of a single program are permitted when the Music Director is conducting, with no extra rehearsal payments.
- b. One time per season, up to 6 rehearsals and 2 concerts of a single program are permitted for any conductor, with no extra rehearsal payments.

## B. REHEARSAL TIME REDUCTION

In any one week, three (3) rehearsals of three (3) hours each shall be the equivalent and may be scheduled in place of three (3) rehearsals of two and one-half (2½) hours each and one (1) rehearsal of two (2) hours. Similarly, two (2) rehearsals of three (3) hours equals three (3) of two and one-half (2½) hours; and one (1) of three (3) hours equals one (1) of two and one-half (2½) hours and one (1) of two (2) hours.

## C. EDUCATION &amp; COMMUNITY ENGAGEMENT SERVICES

## 1. Educational Concerts

- a. The Society shall have the option, during each of four (4) weeks of the Subscription Season, to schedule an educational concert of one (1) hour's duration under the following schedule: four (4) concerts plus three (3) rehearsals of two and one-half (2½) hours each, plus one educational concert of one (1) hour's duration, such educational concerts to be held at Lincoln Center on a rehearsal day. In addition to overtime at a dress rehearsal (Article VII, Section A.5) Orchestra personnel will be available for up to thirty (30) minutes of overtime at any one of these three (3) rehearsals. The Society may schedule two back-to-back daytime educational concerts of 65 minutes' or less duration, scheduled to begin no later than 11:15 a.m., with no more than a total time of 190 minutes elapsed from the beginning of the first concert to the finish

of the second, instead of one regular concert plus one rehearsal. (Educational concerts of regular concert length in a regular week will count as a regular concert.)

- b. The Society shall have the option, up to two times per year during the subscription season, to program two two-week cycles utilizing: 1) programs which feature the same main work(s); 2) second week to include a partial change of program. The education concerts shall be limited to sixty-five (65) minutes each.

WEEK 1

4 subscription rehearsals

4 subscription concerts

WEEK 2

4 subscription concerts

1 subscription rehearsal for repertoire change

1 YPC rehearsal or other rehearsal for young people

2 YPC or other concert(s) for young people (not to exceed 65 minutes in length)

When a ninth (9th) service is scheduled during an Education Week, this service shall be compensated as an extra service. When a tenth (10th) service is scheduled during an Education Week, this service shall be compensated as an extra concert.

2. Education Weeks

Except as specified in Article VI.C., the following shall apply in the event the Society devotes any weeks to education concerts:

- a. The Musician shall play eight (8) education concerts per week;
- b. The Musician shall play one rehearsal of two and one-half (2½) hours per week;
- c. Concerts and rehearsals shall be held on Monday through Friday; and
- d. Concerts shall be limited to sixty-five (65) minutes each. If two concerts are given on the same day, no more than a total time of one hundred ninety (190) minutes shall elapse from the beginning of the first concert to the finish of the second, and the first may be scheduled to begin no later than 11:15 a.m. In a "student (education) week," the Society may give one regular length concert (not necessarily for students) in place of two such back-to-back concerts.

3. Education and Community Engagement Activities other than standard rehearsals and concerts

The following provisions build upon the Society's century-long commitment to education, and seek to foster greater ties to New York City's diverse communities. The goal is to humanize and make more relevant the orchestral experience by fostering creativity and collaboration through music. Working with community based partners, we seek to create long lasting musical engagement for all who participate.

- a. Activities will be limited to education and community engagement especially with respect to diverse communities.
- b. Orchestra Committee or other appropriate musicians' committee to be consulted and involved in planning on an ongoing basis for these activities. Orchestra Personnel will provide oversight of all scheduled services.

Best efforts will be made to identify engagement weeks as early as possible in the season planning process, e.g., in early drafts of the date book, meeting in Vail, etc. Minimum advance notice is 30 days.

- c. An attempt will be made to evenly distribute the assignments of these weeks amongst the Musicians, and consideration will be given to musicians interested in participating in these weeks. There will be communication of activities involved in specific weeks to solicit interest. The assignments will be appropriate to the individual musicians scheduled, with full consideration for the compatibility of ensembles.
- d. Musicians assigned will have the same number of days off in the week (consecutive or non-consecutive) as in the orchestra schedule that week.
- e. Repertoire for the week will not exceed 70 minutes. If two performances are given on the same day at the same location, each concert will be limited to 45 minutes. Break time between performances will be at least 30 minutes, and no more than a total time of 150 minutes shall elapse from the beginning of the first performance to the finish of the second performance. These back-to-back performances will be considered as one service. Break times between performances of less than 30 minutes are subject to Orchestra Committee approval. There shall not be more than two services in the same day, and no more than one service in a day if it is a back to back performance service. Services shall occur on a schedule of either morning-afternoon, or afternoon-evening. Morning-evening services are subject to Orchestra Committee approval.



- f. While there is no limit on the number of engagement weeks that can be scheduled for the orchestra as a whole, no musician will be mandated to work more than three such weeks in a season. A workweek shall not exceed six services, with at least one rehearsal. Deviations are subject to Orchestra Committee approval. No Musician will be scheduled for consecutive weeks without their prior consent. Any Musicians who participate in more than three weeks in a season will be granted one additional relief week, which may roll from season to season and to be scheduled in accordance with usual practices by the Personnel Manager.
- g. Mandatory engagement activities may not occur while on tour, except during residencies subject to the approval of the Orchestra Committee, and excluding Vail.
- h. Unless as agreed by the Orchestra Committee, all venues will be within the five boroughs of New York City other than agreed residencies, and will showcase the Musicians and the Philharmonic in the best possible light. Proper staff assistance and transportation will be provided. Activities will be performance based, though may include speaking. No musician will be asked to do anything that requires special training or certification, e.g., music therapy, etc. No musician will be required to perform individually.

#### D. MOVIE WEEKS

There shall be no more than 4 total weeks of movies in a season, with no more than one movie in a week unless approved by the Artistic Committee. There shall be no consecutive weeks of movies unless approved by the Artistic Committee. All Artistic Committee approvals shall not be unreasonably withheld. A movie week is defined as a week with a movie in it.

#### E. SUMMER WEEKS

Summer Weeks shall consist of eight (8) services with a maximum of five (5) concerts per week. Summer Weeks are those weeks occurring between the close of the regular New York subscription season and the beginning of the following regular New York subscription season, except those weeks designated in Sections F, G, H, I and J of this Article.

Any Parks Concert must be canceled at least one-half hour before bus departure from David Geffen Hall, or use of the rain date for that concert will be forfeited.

A rain date may be scheduled as a ninth (9th) service in any one summer week with four (4) rehearsals during each year of this Agreement for which Musicians will not be paid unless actually called to work. If a rain date scheduled as a ninth (9th) service is canceled less than twenty-four (24) hours prior to the scheduled starting time, Musicians shall be paid fifty percent (50%) therefor. Cancellation of the rain date may be by verbal or written notice but in any event shall be automatic if no prior summer week's service applicable to the rain date in question has been canceled due to rain.

During Parks Concerts, the Orchestra Committee, in consultation with the Personnel Manager, shall decide whether or not jackets will be worn during the performances due to the temperature of the stage. The alternative dress code for Parks Concerts and Summer tours shall be determined before each begins.

The Society agrees to meet and confer with the Orchestra and/or Tour committees to establish new guidelines for dress code on tours, residencies and for outdoor concerts, in order to help ensure comfort for Musicians when weather and/or stage temperatures result in an uncomfortable performing situation. The Society agrees to review the overall dress code for the season on an annual basis.

#### F. TOUR WEEKS

Services included in the basic weekly salary while on tour are as defined in Article IX below.

#### G. FESTIVAL WEEKS

Ten (10) services per week will be allowed in one city with a maximum of five (5) concerts per week where no nights are spent outside of New York City. All services in excess of eight (8) per week shall be compensated as extra services.

#### H. RESIDENCE WEEKS

Eight (8) services with a maximum of five (5) concerts if there are more than six (6) consecutive nights spent outside of New York City in one location; seven (7) services with a maximum of five (5) concerts if there are six (6) consecutive nights spent outside of New York City in one location. Fewer than six (6) nights in one location shall be considered as a tour week. As the Society is seeking to establish a permanent summer residence, if a bona fide offer of such residency is developed, it is agreed that Society reserves the right

to re-open the contract in the matter of residency weeks and the application of runouts, touring provisions and vacation weeks.

#### I. REHEARSAL WEEKS

There shall be eight (8) services, exclusive of recording or television rehearsals or sessions, in any week(s) devoted solely to rehearsals.

#### J. EXTRA SERVICES

“MEMBERS OF”: It is understood that from time to time the Society may schedule extra services (concerts, rehearsals) which will be designated as voluntary on the part of the Musician. Except as provided below, only those who perform the voluntary service will be paid. Each Musician must indicate to the Society their desire to participate in a designated Voluntary Service in advance of a deadline announced by the Society. If the repertoire is posted at the same time as the announcement of the sign up, only those needed to fulfill the instrumentation will be hired. 30 days prior to the first service, all those who have signed up will be compensated even if posted instrumentation changes. Society will use its best efforts to utilize an equitable earnings rotation. Should a Musician who has signed up for a Voluntary Service and for whom there is a part fail for any reason to perform, they will not be paid. Society reserves the right to cancel engagement(s) if an insufficient number of Musicians sign up to participate. Such cancellation will be made without payment to Musicians who have signed up for said engagement(s).

#### K. MANDATORY EXTRA SERVICES

Participation in extra services which require payment for all Orchestra Players, such as TV or recording sessions, shall be mandatory if the Player's services are called for, provided that one week's advance notice of the possibility of the session is given and that it is confirmed no less than 48 hours in advance.

#### L. DEFINITION OF SERVICES

Services as referred to in this Article VI, Section K. shall include all rehearsals, concerts and media activities. “Services” as referred to in all other sections of this Agreement shall be limited to rehearsals and concerts, except as defined in Section N. below. There shall be no more than two (2) services in any one day, notwithstanding this limitation. However, the Society may schedule “makeup” recording and/or television sessions that take place following a concert as a third service in a day, subject to the approval by secret ballot of a majority of the Orchestra, with the following exceptions:

1. Patch sessions will not count as a service at any time. If a patch session is needed following the final Tuesday performance of live recording, such a session may be scheduled on a day when two (2) services have already been performed, subject to the approval of the Orchestra Committee, not to be unreasonably withheld.
2. Should patch session(s) be canceled beyond the control of the Society due to emergencies or illness, no payment will be due to the Musicians by the Society or recording company.
3. During subscription weeks, Tuesday evening concerts followed by a patch session will begin at 7:30pm. Total duration of a Tuesday evening post-concert patch session shall be one and one half (1½) hours except two (2) times per year where Tuesday evening post-concert patch session may run two (2) hours. Breaks will be stacked at the end wherever possible.

#### M. NOTICE AND SCHEDULING OF SERVICES

The Society shall review the detailed schedule of services each month with the Orchestra Committee. A two (2) week advance notice shall be given on change(s) of services as posted on the Master Schedule. The rehearsal order for each week shall be posted not later than the Wednesday of the previous week.

It is understood that there may be emergencies beyond the Society's control necessitating changes in the posted schedule. Such changes will be promptly explained to the Orchestra Committee whenever possible, who will jointly decide if it is an emergency and which option is best for the Orchestra before a change can be made. If a change is made, it will be posted for the full Orchestra. If posted within 48 hours of the affected service(s), every effort will be made to notify each Musician of the change(s).

#### N. USE OF SERVICES FOR OTHER THAN REHEARSALS, CONCERTS, OR MEDIA ACTIVITIES

During each Season the Society may schedule training sessions outside of or within the regular rehearsal or concert schedule for each of the following areas: anti-harassment; diversity, equity and inclusion; and safety. Sessions can either be on an individual



## ARTICLE VII: WORKING CONDITIONS

### A. REHEARSALS

#### 1. Duration of Rehearsals

Except as provided in Article VI, Section B above, Paragraphs 4 and 7 of this Section, and Article IX below, all rehearsals included in the basic work week shall be of two and one-half (2½) hours' duration.

#### 2. Intermission Scheduling

Intermission shall generally occur not later than after one (1) hour and twenty (20) minutes of continuous playing time, but in no case later than after one (1) hour and thirty (30) minutes of continuous playing time. In the case of a two hour rehearsal, the intermission shall occur no later than after one (1) hour and ten (10) minutes of continuous playing time. It will be possible to have no intermission in a two hour rehearsal if the rehearsal ends within one and one-half (1½) hours.

#### 3. Intermission Length

Intermission shall be as follows:

In a 2-hour rehearsal:

One 15-minute intermission

In a 2½ hour rehearsal:

One 20-minute intermission

In a 3-hour rehearsal:

Two intermissions, one of 15 minutes and one of 10 minutes; or one intermission of 25 minutes.

In each ½ hour of overtime:

5 minutes intermission which may be taken at any time within the one-half (½) hour overtime period or within the preceding one hour of rehearsal.

In any rehearsal in which the repertoire calls for a reduced number of Players for a work or a portion of a work, or for the purpose of rehearsing less than the entire Orchestra as called for in the score, the Conductor may rehearse a reduced number of Players separately while the other Players have their intermission. In no event, however, shall any Musician receive less than the intermission time required as described above and no intermission shall be less than ten minutes. This "staggered intermission" rehearsal takes place with one Conductor and at one place of rehearsal during one regular rehearsal period as distinct from sectional rehearsals (Paragraph 7).

#### 4. Two Rehearsal Days

On days when two rehearsals are held, there will be one 2½ hour rehearsal and one 2 hour rehearsal. One-half (½) hour of overtime will be permitted after the 2 hour rehearsal. With the consent of the Orchestra Committee, three rehearsal segments of 1 ½, 1½, and 1 hours may be scheduled on such a day and there will be no overtime.

#### 5. Overtime

Orchestra personnel will be available for up to thirty (30) minutes of overtime at any dress rehearsal (where the music rehearsed during the overtime is being rehearsed for the final time prior to its performance) and six times per year for up to thirty (30) minutes of overtime at any rehearsal which is not a dress rehearsal. Overtime shall be paid to the participating Musicians at the rehearsal overtime rate (one and one half times the extra rehearsal rate) per fifteen (15) minutes or fraction thereof: For overtime of five (5) minutes or less, the rate will be one-third the fifteen (15) minute rate. The Society shall use its best efforts to provide advance notice of those rehearsals at which overtime will be required; however, it is understood that there may be conditions which will make it impossible to provide such notice. Under such conditions, notice shall be given during the first five (5) minutes of intermission of the affected service.

#### 6. Extra Rehearsals

Extra rehearsals shall be paid for each fifteen (15) minutes or fraction thereof at 10% of the Minimum Scale of pay for a 2½ hour rehearsal.

Extra rehearsals shall be a minimum of two (2) hours and a maximum of two and one-half (2½) hours' duration.

#### 7. Sectional Rehearsals

The Society may divide the Orchestra for sectional rehearsals which shall be considered a single service. Sectional rehearsals may be of two (2) hours' duration and may be scheduled in any manner consistent with this Agreement. Groups for sectional rehearsals shall not be subdivided beyond the following: Percussion, Brass, Winds, and Strings, or in such manner as is called for in the score.

#### 8. Rehearsals Ending Later than 7:00 p.m.

Any rehearsal ending later than seven o'clock (7:00) p.m., including fundraising or other donated rehearsals, shall be paid at the prevailing New York Philharmonic concert rate.

#### 9. Morning Rehearsal on Day of Afternoon Concert

On the day of an afternoon concert, a morning rehearsal shall not exceed two (2) hours.

### B. CONCERTS

#### 1. Duration of Concerts

Concerts of the regular New York subscription season shall be of two and one-quarter (2¼) hours' duration, and all other concerts shall be of two and one-half (2½) hours' duration starting from the time of call on the bulletin board until the Concertmaster leaves the stage at the conclusion of the concert. For three programs per subscription season, concerts conducted by the Music Director may be 2½ hours only when the last 15-minute segment is caused by a single orchestral encore. The Society reserves the right to schedule two (2) weeks (two [2] sets of four [4] concerts each) during any given winter season and one (1) set of festival concerts in the summer when special works such as opera or oratorio are given for which the concert duration may be three (3) hours. The Society will also expect the Orchestra to waive the two and one-quarter (2¼) or the two and one-half (2½) hour respective limits beginning with the scheduled hour of the concert when there are emergency circumstances causing the late start of a concert, such as delayed arrival for a tour date, storms, sizable traffic jams, etc.

#### 2. Two Concerts on the Same Day

- a. Concerts can only occur in the same venue with the same personnel and program
- b. Concert times must be limited to no more than ninety (90) minutes with or without intermission
- c. Minimum duration between concerts is four (4) hours unless a shorter period is approved by the Orchestra Committee
- d. The Orchestra or another appropriate committee will be consulted in advance of scheduling
- e. There shall be no more than ten (10) weeks per season with two concerts in the same day, no consecutive weeks with two concerts in the same day, and no week with two or more days with two concerts in the same day.

#### 3. Overtime

Concert overtime shall be paid to the participating Musicians at two times the extra rehearsal rate for each fifteen (15) minutes or fraction thereof. For overtime of five (5) minutes or less, the rate will be one-third of the rate for fifteen (15) minutes.

#### 4. Extra Concerts

Extra concerts shall be paid at the rate of one-fifth (1/5) of the Musician's individual weekly salary.

### C. DAY OFF

One day of each week shall be designated as a "day off," and no services shall be required of the Orchestra personnel on that day. The "day off" will be Sunday during the regular subscription season except as specifically provided herein. During the period outside the regular subscription season, the day of the week on which the "day off" occurs may vary, it being understood that the days off shall be arranged so that there will be no more than eight (8) consecutive days of travel or services of any kind in two (2) consecutive weeks without the approval of the Orchestra which shall not be unreasonably withheld. Consecutive days off shall also be provided in accordance with Article VI, Section A, paragraph 5. In addition to the "day off" in each week, the Society during regular subscription weeks will continue its practice of using wherever practicable, a second day in the week, Monday, only for a fifth rehearsal or for extra

services which provide extra pay (television and recording, extra concerts, extra rehearsals, etc.). It is understood, however, that during regular subscription weeks the Society will continue to schedule other Monday services when such scheduling is deemed appropriate or necessary, subject to the limitations set forth in Article VI, Section A, paragraph 5. When practicable, in summer and Festival weeks, the Society will also try to arrange two consecutive days off.

#### 1. Sunday Services

Each season, a total of ten (10) Sunday performances are permitted, subject to the following work rules:

- a. No Sunday morning services are permitted if preceded by an evening service the previous Saturday;
- b. Sunday services will be scheduled as far in advance as reasonably possible, and in consultation with the Orchestra Committee or other appropriate committee;
- c. There will be no more than three (3) services per weekend;
- d. Rehearsals for a subsequent week's program shall be permitted on Sunday only with the prior approval of the Orchestra Committee;
- e. Any Sunday performance must be immediately followed by a Monday off;
- f. Immediately following a three (3) service weekend, Musicians must be given two (2) consecutive days (Monday and Tuesday) off;
- g. If Sunday services are included on two consecutive weeks, Musicians must be given two (2) consecutive days (Monday and Tuesday) off after the first Sunday, regardless of whether that Sunday is part of a three (3) service weekend; and
- h. Except as provided herein, all current contractual provisions will apply to Sunday work.

#### D. EXTRA INSTRUMENTS (DOUBLING)

##### 1. Doubling

A member who is called on to play an extra instrument shall receive, in addition to their usual salary, an extra fee of 6.25% of their individual weekly salary (first double) for each concert in which they are called on to play such extra instrument. That member shall receive an extra fee of 50% of the first double for the second and each additional extra instrument for each concert in which they are called on to play said extra instrument(s).

##### 2. Non-Traditional Doubling

At least once per season, the orchestra committee will meet with the Orchestra Personnel Manager and a person designated by the Artistic Planning department to determine the need for non-traditional doubling. The library shall gather all available scores that include non-traditional instruments (including bespoke, 3D printed, or other custom instruments) or other percussion instruments to be played by Musicians outside of the percussion section. At said meeting, the instruments that fall outside of a traditional double shall be evaluated to determine the relative level of skill necessary to perform on the instrument in question at a level expected of a musician of the New York Philharmonic. The criteria to be considered shall include but not be limited to:

- a. Does the instrument need to be played in strict rhythm (i.e., is the accuracy of timing of an entrance important)?
- b. Are there rhythmic patterns that must be executed with other members of the ensemble?
- c. Does the instrument require a level of skill to produce the appropriate sound that requires additional hours of practice?
- d. Is the passage exposed enough to give reasonable concern of disrupting a performance if not performed adequately?

If any of the above criteria are met and it is determined that the instrument is considered a non-traditional double, every musician performing said non-traditional double shall be compensated at the specified rate for doubling. Said doubling will be calculated from base scale as opposed to individual contract rates.

In the event that there is disagreement between the orchestra committee and Society, a secret ballot vote shall be taken among four members of the orchestra committee and three members designated by the Society. The majority vote shall determine whether or not doubling shall be paid.

#### E. CONDUCT OF MUSICIANS

Orchestra members shall agree to abide by all reasonable rules and regulations of the Society including the following:

1. Musicians shall be seated on stage and ready to play five (5) minutes before the time scheduled for each rehearsal and concert;

2. The seating designation of Musician in their respective section shall be determined not later than during the first rehearsal of the season;
3. Musician shall not leave or absent themselves from a performance or rehearsal, or any part thereof, for the purpose of playing another engagement, nor shall the Personnel Manager authorize any such leave or absence;
4. If Musician misses one or more rehearsals or concerts because of illness, they shall present a doctor's certificate upon return to work. In the event of any such absence Musician shall not receive salary during their absence, except as provided in Article XVI. The Society, at its option and expense, may obtain a second opinion from a doctor of the Society's choice regarding the illness of any Musician which extends beyond one week. In the event of a dispute arising out of a disagreement between the opinions of the two doctors, the two doctors shall choose a third doctor whose opinion shall be final. Any expenses relating to the third doctor will be borne by the Society;
5. Musicians shall not leave the stage at the end of any composition or at the end of any concert until the Concertmaster has finally left the stage;
6. Smoking and conversation on the stage during rehearsals and concerts are absolutely forbidden; and
7. Society may take disciplinary measures in the event of the violation of these rules or for other just cause.

#### **ARTICLE VIII: SUBDIVISION OF THE ORCHESTRA**

The Society, in consultation with the Orchestra Committee, will have the right to divide the Orchestra into two performing groups in such manner as the Society desires and may charge admission for either or both groups provided that: – delete redlining

- A. such subdivision shall occur in no more than five (5) weeks total per contract year;
- B. the group may appear on the same program no more than in two (2) weeks or a total of eight (8) performances;
- C. the groups shall perform in New York City only, unless by mutual agreement;
- D. the Society will provide transportation from David Geffen Hall to places of performance outside the Borough of Manhattan and for the return to David Geffen Hall.

#### **E. CONTEMPORARY MUSIC WEEKS**

There may be two (2) split weeks per year involving a reduced orchestra and a contemporary music ensemble. Neither of these weeks shall be used for the ninth (9th) week of vacation.

The following rules shall apply to the contemporary music split orchestra weeks:

1. The contemporary ensemble may have a maximum of six (6) rehearsals and a maximum of two (2) concerts.
2. No extra rehearsal fee will be paid to Musicians not participating in the contemporary ensemble.
3. For Musicians in the contemporary ensemble, any musician who plays on more than four (4) rehearsals shall receive extra compensation at the extra rehearsal rate for each additional rehearsal played.
4. For works involving ten (10) or fewer musicians, participation shall be voluntary, and all participants in such ensembles shall receive additional compensation equal to the customary large venue chamber music fee. There shall be one fee per musician per week.
5. Prior to the first rehearsal of each contemporary music ensemble program an extra 'reading' rehearsal may be scheduled as necessary, at the discretion of the committee and Music Director. Attendance at this rehearsal is not mandatory. All Musicians attending this rehearsal will be paid at the prevailing extra rehearsal rate.

6. Personnel assignments for the contemporary music ensemble will be made as soon as possible after the instrumentation is known, and scores will be made available as soon as they are received. Whenever possible individual assignment preferences will be honored. No-one is exempt from participating in the series. Any member of the Orchestra, regardless of title or position, may be asked to play even if there is only one player on a part. All assignments are subject to the approval of the Music Director and the Personnel Manager, who will assist as necessary in ensuring that the parts are fairly distributed amongst available personnel.

## ARTICLE IX: RUNOUTS, TOURS AND RESIDENCIES

### A. GENERAL

All the principles and limitations regarding touring (as contained in this Article IX) shall guide the planning and operating of any tour or runout concert. It is recognized that there may be circumstances when it is considered to be in the mutual interest of both parties to deviate from these guidelines. In the event the Society requests a variance of any condition herein, the advantages and consequences of same shall be discussed in detail with the Tour Committee, which shall have the authority to approve or deny the request. In the event that subsequently the Society wishes to submit a request to the entire Orchestra, there shall be opportunity for airing of the issue in a manner to each be mutually agreed upon. In such event, the majority vote of the Orchestra shall be final.

### B. RUNOUTS

1. A runout shall be understood to mean any concert played outside New York City, but involving no overnight accommodations on the night of or immediately preceding the concert. For all runouts each Musician shall receive board money at the rate of  $\frac{1}{6}$  of the then applicable GSA Maximum allowance, in lieu of per diem, for every four hours or fraction thereof during which they are absent from New York City. Such "absent time" shall be computed from the time of departure from David Geffen Hall to the time of return to David Geffen Hall.
2. The Society may schedule a maximum of eight runouts during each New York Subscription Season and a maximum of an additional ten runouts outside each New York Subscription Season. It is understood that any runouts which occur while the Orchestra is on tour shall be excluded from this count. For the purpose of this count, a concert will be counted as a runout only if the official transportation for the Musicians departs from the official departure location. For the purposes of payment only, each runout in excess of six (6) in the Subscription Season, and in excess of eight (8) outside the Subscription Season shall be counted as one concert and one rehearsal.

For example: If a week contains a runout plus four rehearsals and three other concerts, an extra rehearsal will be paid to each Musician playing the runout; if a week contains a runout plus three (3) rehearsals and four other concerts, an extra concert will be paid to each Musician playing the runout; and if a week contains a runout plus three rehearsals and three other concerts, no extra payments will be made. The Society will select those runouts, in excess of six (6) in the New York Subscription season, or eight (8) outside the New York Subscription season, which shall be so treated.

3. On the day following a runout, the Society will schedule no service earlier than twelve hours following the arrival back to David Geffen Hall.
4. Whenever a runout results in the return to David Geffen Hall later than 12:30 a.m. of the Society-provided transportation, all Musicians who participate in the service, regardless of whether they take the official transportation, shall be paid overtime in 15-minute increments at the concert overtime rate.

Any such overtime payment will be made to all carpool members using the official transportation who wait for the late arrival of other official transportation.

5. There shall be no more than one runout scheduled during any week of the New York Subscription Season, and no more than three runouts during any week outside the New York Subscription Season.

### C. TOURS

#### 1. Definition - Services

- a. Tour Week. A Tour Week shall be defined as seven (7) consecutive days beginning on the day of departure (day 1 of 7) and each seven day period thereafter. For the purpose of service calculation (i.e. payment for the basic work week), all

remaining days in the normal calendar weeks (Monday-Sunday) of the Orchestra's departure on tour and return from tour which are not included in full Tour Weeks shall be counted as one or more combined weeks. Subject to all other limitations contained in this Agreement, each of these combined weeks shall have the applicable service limitations as would apply to each such week(s) if it were a full week of the type of week determined by the majority of services in said week.

- b. Maximum Days of Touring or Residency. There shall be no more than fifty-two (52) days of touring or residency in any contract year.

There may be a maximum of eight (8) additional days of touring or residency in a four-year contract or ten (10) additional days of touring or residency in a five-year contract, to be spread over the length of the contract with tour committee approval, which shall not be unreasonably withheld.

No tour or residency of seven (7) days or longer will be scheduled within twenty-eight (28) days from the return from a prior tour or residency of seven (7) days or longer when both tours or residencies are international. When one of the tours or residencies is domestic, there may be fewer than twenty-eight (28) days with tour committee approval, which shall not be unreasonably withheld.

- c. Number of Services on Tour. The basic weekly salary shall include compensation for five (5) services per week while on tour. There may be no more than five (5) concerts or seven (7) services in any Tour Week. All rehearsals on tour which are not compensated by the basic weekly salary shall require extra pay. Regular extra rehearsals shall be paid at the extra rehearsal rate. Pre-concert tour rehearsals shall be compensated in two ways, dependent upon the length of the rehearsal. Pre-concert rehearsals of more than thirty (30) minutes shall be counted as a rehearsal service for the week, and may be scheduled to take place within three hours of a concert. Pre-concert rehearsals of thirty (30) minutes or less shall not be counted as a service, and will be paid at the rehearsal overtime rate in fifteen (15) minute increments, and shall be scheduled to conclude no earlier than thirty (30) minutes before the start of the concert. In no case shall the total number of rehearsals of any kind plus concerts exceed ten (10) per Tour Week. In the event there are more than three (3) pre-concert rehearsals of thirty (30) minutes or less in any week, the remaining pre-concert rehearsals of that kind shall be paid at the concert overtime rate. On a day where one concert has been scheduled, there shall be no more than one rehearsal of any kind. Pre-concert rehearsals will not be allowed twice in the same hall when the same repertoire and soloists are repeated.

When there are five (5) or fewer services in a tour week, a pre-concert rehearsal of thirty (30) minutes or less may be substituted for a full-length rehearsal without extra pay.

Once each tour, there may be six (6) services in a tour week with a maximum of five (5) concerts (with no extra payment) in order to accommodate a change of conductor.

- d. Days of Break After Tour. For a tour to continental U.S., Mexico or Canada, the following number of break days shall apply:

<u>Days on Tour</u>	<u>Break Days Immediately Following Tour</u>
0 – 4	0 days
5 – 14	1 day
15 – 21	2 days
22 or more	3 days (or 2 days if followed by vacation or preceded by a free day)

For a tour to Central America (except Mexico) or South America, the following number of break days shall apply:

0 – 4	0 days
5 – 14	2 days
15 – 21	3 days (or 2 days if followed by vacation or preceded by a free day)
22 or more	4 days (or 3 days if followed by vacation or preceded by a free day)

For a tour which involves a time change of four (4) hours or more, the following number of break days shall apply:

0 – 21	3 days (or 2 days if followed by vacation or preceded by a free day)
22 or more	4 days (or 3 days if followed by vacation or preceded by a free day)

Following a tour of any length which involves a time change of eight (8) hours or more, there shall be no fewer than four (4) break days (or 3 days if followed by vacation or preceded by a free day) following the end of the tour.

- e. Service Limitation on Travel Days. On any day where the scheduled travel time between bus departure from the hotel in one city to the bus arrival time at the hotel in the next city is six (6) hours or more, or bus departure from the hotel in one city to the scheduled arrival time of the commercial carrier in the next city is four and one-half (4½) hours or more, there shall be no service. Where such scheduled travel time is less than six (6) hours or four and one-half (4½) hours respectively, there may be only one service. A second service on a travel day may be held only with the consent of the Tour Committee.



However, pre-concert rehearsals of thirty (30) minutes or less may be held on a travel day without the consent of the Tour Committee.

- f. Rehearsals on Tour. In consultation with the Tour Committee of the Orchestra, management will minimize the amount of rehearsal on tour consistent with artistic standards.
- g. Runouts on Tours and Residencies.
  - (1) A runout on tour shall be generally understood to mean any concert played outside the city of overnight accommodation but requiring no change in hotel, with some exceptions to be discussed and approved by the tour committee.
  - (2) For the purpose of the calculation in Article IX: C.3.c, a runout on tour shall be counted as intercity travel.
  - (3) A runout's total roundtrip travel time while on a tour or residency shall not exceed three (3) hours without the consent of the Tour Committee. If the runout's roundtrip travel time exceeds three (3) hours, then overtime shall be paid at the prevailing rehearsal overtime rate in fifteen (15) minute increments for the time over three (3) hours.
  - (4) On the day following a runout, the Society will schedule a twelve (12) hour free window from the time of return to the hotel from the runout, where there shall be neither any service nor any scheduled departure from the hotel.
  - (5) There shall not be consecutive days of runouts on any tour.

## 2. General Touring Conditions

- a. Tour Committee Consultation. The Tour Committee will be consulted from the earliest stages of tour planning regarding all tour plans including all specific tour conditions, selection of hotels and travel arrangements. The recommendations of the Tour Committee will be given substantial weight in the Society's determination. The Society and the Tour Committee will in this manner together plan and administer all tours, the latter consulting with the Orchestra whenever it deems advisable.
- b. Tour Performance Conditions. In consultation with the Tour Committee, the Society will develop desirable performance condition standards which will be included in contracts for tour concerts whenever possible. The Society will endeavor to see that these conditions are provided at all tour concerts.
- c. Advance Person. The Society will provide an advance person on tours when conditions warrant.
- d. Backstage Security. Maximum security backstage should be provided at all times. Guests of Orchestra Musicians shall be prohibited from the backstage area unless there are ample dressing rooms, separate for men and women from which guests are excluded. Management staff will be available before and after services to assure security backstage.
- e. Orchestra Guests. Guests of Orchestra Musicians shall travel on the last bus to the concert hall.
- f. Dissemination of Tour Information. Maximum amount of information will be disseminated to the Orchestra in advance.
- g. Practice Facilities. While on tour, practice facilities for Musicians shall be made available whenever possible.
- h. Tour Itineraries. Tour itineraries (not necessarily the Tour Book) will be distributed at least three (3) weeks in advance of departure.
- i. Union Regulations. Except as herein specifically provided, tours shall be governed by all rules and regulations of Local 802, A. F. of M.
- j. Instrument and Wardrobe Trunks. The Society will provide members of the Orchestra with instrument and wardrobe trunks. It is understood that only those instruments, clothes and personal effects that are noted on the official Orchestra cargo carnet will be packed in the trunks.
- k. Drinking Water. The Society will provide potable drinking water backstage and arrange to have it available at hotels whenever the State Department or tour doctor so advises.
- l. Medical Leave. An Orchestra member should inform the Society no less than six (6) weeks in advance of the initial departure date of a tour should said member not be able to go on the tour due to a long-standing medical condition which is known by the Musician to prevent them from playing on the tour.
- m. Data Security. For tours that include countries other than the U.S. and China (including Hong Kong), at least 60 days prior to departure, the Society will advise the Orchestra and/or Tour Committees as to whether any of the countries to be visited pose personal data security risks. The advice will be based on U.S. government advisories, such as those given by the Commerce Department's Bureau of Industry and Security (BIS), as well as the country "block list" that the Society maintains for its own network security.

Should a country pose such a risk, the Society will recommend a Virtual Private Network (VPN) for use by the Musicians while on tour. The Society will reimburse the Musicians for up to one month of the fee for the recommended VPN during a China tour (including Hong Kong) and for a month of the VPN fee while the Musicians are on non-China tours where there is a data security risk. Notice will be provided to Musicians at least 30 days prior to departure. The Tour Committee

3. Schedule and Travel Conditions

- a. Maximum Consecutive Days Away from New York City. No more than twenty-five (25) consecutive days or twenty-eight (28) consecutive days, if followed by vacation, shall be spent outside of New York City.
- b. Limitation on Consecutive Days of Travel or Service. Combining the tour with the periods in New York City immediately preceding and subsequent to the tour, there shall be no more than eight (8) consecutive days of travel or service of any kind. There shall be no more than five (5) consecutive days of concerts. There shall be no more than 5 concerts in any 5 consecutive days. Maximum number of concerts in one day shall be one full-length concert and one concert of one (1) hour and fifteen (15) minutes or less.
- c. Limitation on Consecutive Days of Intercity Travel. There shall be no more than two (2) consecutive days of intercity travel (necessitating a change in hotel accommodations) in any seven (7) day period except with tour committee approval, which shall not be unreasonably withheld. For tours in the United States (including Canada), Europe, and Japan, there may be one (1) occasion within each such tour where there may be three (3) such consecutive days instead of a two (2) consecutive day period.
- d. Limitation on Extended Intercity Travel Time. Including the flights departing and returning to New York, there shall be a maximum of one (1) day in any six (6) day period or maximum of one (1) day in any five (5) day period in Asia, where the time between the bus departure from the origin hotel and the bus arrival at the destination hotel exceeds nine (9) hours, excluding runouts, without the consent of the Tour Committee.

When the local time difference between places of departure and arrival is five (5) hours or greater, or when the total travel time from the bus departure at AFH (or the departure hotel) to the bus arrival at the destination hotel is eleven (11) hours to fourteen (14) hours, no services shall be scheduled for thirty (30) hours following scheduled arrival time at the hotel.

When the local time difference between places of departure and arrival is eight (8) hours or greater, or when the total travel time from the bus departure at AFH (or the departure hotel) to the bus arrival at the destination hotel is fourteen (14) hours or more, no services shall be scheduled for forty (40) hours following scheduled arrival time at the hotel.
- e. Break After Transoceanic Travel. There shall be at least thirty (30) hours free between the scheduled arrival of the commercial carrier on a transoceanic flight with a time change of five (5) or more hours and the scheduled starting time of any service. Society will use its best efforts not to count the 30-hour "free window" as a free day.
- f. Free Day and Banking Day Preceding Tour. Prior to any tour of seven (7) days' duration or longer, the Society shall so arrange the work schedule that there be a free day for each Musician not more than three (3) days prior to the beginning of the tour. If this free day does not fall on a banking day, the Society shall also so arrange the work schedule such that there be a banking day with only one (1) service not more than five (5) days prior to the start of the tour. Prior to any tour of eight (8) days or longer, there shall be a free day immediately preceding the day of departure.
- g. Late Arrival at Hotel on Day Off. When travel arrangements on tour require, arrival at the Orchestra hotel in the next city will be permitted until 2:00 a.m. on the day off if mutually agreed upon.
- h. Intercity Travel After Evening Concert. There shall be no intercity travel after an evening concert, except for the return to New York City and such other circumstances agreed upon by the Tour Committee. When such other circumstances are unavoidable, arrival of the buses at the overnight hotel shall be no later than 2 hours following the end of concert. If arrival occurs after 2 hours, over time shall be paid at the prevailing rehearsal over time rate in fifteen-minute increments.
- i. Morning Departure After Evening Concert. While on tour, the Society will not schedule bus departure earlier than ten hours following the end of the previous night's concert; provided, however, the Society will make every effort to schedule no departure from the hotel before 9:00 a.m.
- j. Break Between Hotel Arrival and Service. The Society will schedule at least three (3) hours between arrival at the hotel and departure from the hotel for any service.
- k. Air Travel. Wide body aircraft shall be used whenever feasible. Major airlines are preferred. Airplanes should have maximum seating space, reclining seats, good food and beverage service, and operable air-conditioning. Seating preference on planes shall be given first for physical reasons, and second based upon seniority.
- l. Bus Travel. Finest quality air-conditioned buses should be used for intra-city travel. The Society should use first class buses for intercity trips of scheduled travel time of four (4) hours or less where no regularly scheduled direct rail transportation is available and where air travel is deemed impractical by the tour committee.
- m. Independent Travel. If a Musician chooses to travel independently, such savings in expenses as are incurred by the Society will be paid to the Musician.
- n. Departure from David Geffen Hall. Departure on tours from David Geffen Hall shall take place only between the hours of 9:00 a.m. and 10:00 p.m. unless otherwise agreed upon by the Tour Committee.



#### 4. Hotels

- a. Location. The Orchestra hotel shall be located in the central downtown area whenever mutually agreed upon. When the Orchestra hotel is not located downtown, and a substantial number (approximately a bus load) of the Orchestra wish, an optional hotel centrally located in the downtown area should be made available.
- b. Luggage Storage Before Early Luggage Call. When there is an early luggage call, secure storage the night before shall be available.
- c. Rest Facilities After Check-out. The Society will, whenever facilities are available, make arrangements on tour whereby members of the Orchestra will have rest and comfort facilities during the period between hotel check-out time and one hour prior to concert time, through either extension of hotel check-out time or by renting a few large rooms for use by the Musicians.
- d. Retention of Rooms. On a day when the Orchestra is scheduled to travel to a different city following a concert, or when there are three or more hours between the checkout time and the scheduled departure time from the hotel, the Society will make arrangements, whenever possible, for the Musicians to keep their individual hotel rooms until the time of the concert, regardless of check-out time, at no cost to the Musician. It is understood that the Society is willing to pay up to the cost of one full day's stay at the hotel in order to keep the Musicians' rooms.

#### 5. Per Diem

- a. Travel Expenses: United States Possessions and Foreign Per Diem Formula. In addition to their regular compensation, members of the Orchestra shall receive Per Diem in the event the Orchestra shall be on tour. Except as provided in sections 5(d) and 5(e) hereof, such monies must be paid in U.S. currency no later than one day before the banking day in advance of departure for the tour. Per Diem in Alaska, Hawaii, United States Possessions, and in foreign areas, shall be based upon the latest General Services Administration Schedule of Maximum Rates of Per Diem Allowances (GSA Allowance) authorized to be paid by the Federal Government on an individual city basis in Alaska, Hawaii, United States Possessions and in foreign areas, in effect at the time of the Orchestra's visit.

In the event that the GSA Allowance is changed on a date that the Orchestra is on tour, then retroactive adjustments of the Per Diem shall be made to reflect the change in the GSA Allowance for the applicable periods involved.

The GSA Allowance shall be divided into two parts: "Hotels" and "Meals and Miscellaneous" according to Rulings promulgated by the GSA. In the event no such breakdown is available, it is agreed that the "Meals and Miscellaneous" component of the Per Diem shall be calculated at fifty-five percent (55%) of the applicable GSA Allowance.

- b. Domestic Per Diem Formula. During the term of the contract, the domestic Per Diem is as follows: \$21.00 for breakfast, \$22.00 for lunch, \$33.00 for dinner, and \$40.00 for miscellaneous expenses. An additional bonus of \$22.00 will be paid for each day on tour in San Francisco and Los Angeles and \$18.00 for each day on tour in the ten largest cities by population other than San Francisco, Los Angeles, and New York. The bonus will be paid for each day the Orchestra remains in the city overnight.
- c. Partial Per Diem. Partial Per Diem shall be paid depending upon the time of departure from or arrival in New York City according to the following payment schedule:

Breakfast = 15% of the Meals and Miscellaneous Allowance

Lunch = 35% of the Meals and Miscellaneous Allowance

Dinner = 50% of the Meals and Miscellaneous Allowance

If the Orchestra is absent from New York less than a full day, partial Per Diem will be paid in accordance with the hour of arrival in or departure from New York as follows: arrival in New York before 7:00 a.m. or departure after 9:00 a.m. - breakfast will not be paid; arrival in New York before 11:30 a.m. or departure after 1:00 p.m. - lunch will not be paid; arrival before 5:30 p.m. or departure after 7:00 p.m. - dinner will not be paid.

- d. Payment in Local Currency. Hotel payments and Meals and Miscellaneous allowance may be paid in local currency if the Society's agreement with the sponsor provides for payment of the Society's fee, in whole or in part, to the Society in local currency. If local currency is not convertible to U.S. dollars, the Society will make every effort to arrange for conversion whenever possible.
- e. Independent Lodging Arrangements. Where the Society furnishes the hotel, if a Musician wishes to make their own arrangements for hotels they shall be permitted to do so. Society shall only be responsible for reimbursing the actual cost of hotel rooms, including taxes, which would have been paid by the Society.

#### D. RESIDENCY

During the period of a residency, all touring conditions (existing in A, B, and C above) shall apply except basic weekly services

## ARTICLE X: OUTSIDE ENGAGEMENTS

Orchestra members may accept any other engagements subject to the following conditions:

- A. That remuneration shall not be less than is stipulated for like services in this Agreement;
- B. That the time of performance of any such other engagement shall not conflict with the time of any concert or rehearsal at which Musician is called upon to play pursuant to this Agreement;
- C. That such other engagement does not use the name of or refer to the Society unless permission for such use has been granted by the Society; and
- D. That a Musician may not accept any outside engagements while on sick leave.

## ARTICLE XI: ORCHESTRA COMMITTEE

The parties recognize that the Orchestra Committee, consisting of five Players elected from time to time by members of the Orchestra, represents, together with the Union, the Players in matters of collective bargaining (including but not limited to, grievances, requests for variances from any terms hereof, and as to any issues brought to the attention of the Committee by one or more members of the Orchestra, except for individual overscale discussions). It is understood that the duties, functions, and decisions of the Orchestra Committee shall at no time be in conflict with the terms of this Agreement, nor shall the Committee act in any way that abridges the basic obligations and responsibilities of the Committee as members of the Union and of the A. F. of M. or that abridges the authority of the Executive Board of the Union. The Society shall address itself to the Orchestra Committee regarding any matter pertaining to the general welfare of the Orchestra.

No Committee member's position in the Orchestra shall be jeopardized in any way by their activity as a member of the Orchestra Committee.

## ARTICLE XII: MEDIA

Media provisions are governed by the AFM/EMA Integrated Media Agreement (IMA), the "EMG Side Letter" dated October 14, 2020, included as attachment 4 of the Memorandum of Understanding dated as of December 1, 2020, and the "Covid Side Letter" as ratified by the Musicians on October 17, 2020, and as amended and ratified, if necessary, from time to time during the Term, as well as other AFM media agreements when the above agreements do not apply. **Attached as Exhibit A attachment 4**

### A. RADIO BROADCASTS

All concerts may be taped for radio broadcast and archival purposes and broadcasts thereof may be made pursuant to the above agreements.

- 1. The standard radio fee shall be eight percent (8%) of the minimum weekly salary in effect at the time of broadcast if there is a commercial sponsor (i.e., if any portion of the cost of the broadcast(s) is provided by a commercial enterprise or a not-for-profit foundation or similar organization connected thereto), six percent (6%) if there is a non-commercial sponsor (i.e., if any portion of the cost of the broadcast is provided by an independent not-for-profit foundation, such as the MacArthur Foundation or the Ford Foundation, and mentioned in the program), and four percent (4%) if no sponsor or contribution is mentioned.

It is understood that the Exxon-New York Philharmonic radio network has expired and has not been replaced with a similar network or commercial sponsor. In an effort to consider every possible solution to restoring New York Philharmonic radio broadcasts or series, the Society may bring to the full Orchestra for its consideration and approval radio fee compensation packages other than the standard radio fee outlined in this Article XII: A.1. The Orchestra agrees to give serious and good faith consideration to said proposals from the Society.

- 2. One standard radio fee shall be paid for each one time broadcast by delayed tape in the United States and Canada, regardless of network.
- 3. One standard radio fee shall be paid for each "one-shot" basis program for the right to broadcast live and/or one-time delayed

in one normal market or foreign area in accordance with normal one-time broadcast use patterns on commercial or non-commercial stations.

4. Each broadcast, or any part thereof, for which one radio fee has been paid (No. 2 or 3 above) and which has been broadcast or which is able to be broadcast in any one market, shall be available for broadcast use in all other markets, world-wide, in accordance with normal one-time broadcast use patterns, upon payment of seventy-five percent (75%) of the standard radio fee.
5. For each additional payment of one-hundred percent (100%) of the standard radio fee, in addition to the payment in No. 2 or No. 3 or No. 4 above, a program or any part thereof may be rebroadcast once on a world-wide basis in accordance with normal one-time broadcast use patterns.
6. The taping of rehearsals is permitted only for purposes of aiding in determining balances and sound quality of the concert tapes. All rehearsal tapes will be erased within 72 hours of having been made.
7. Compilation radio programs, consisting of performances from more than one concert program, may be broadcast on a one-time basis in one normal market or foreign area, in the United States and Canada, upon payment of only one standard radio fee, regardless of network.
8. All radio tapes may be used for intermission features for radio broadcasts at no additional payment.

#### B. NEWS AND PROMOTIONAL USES

Subject to the approval of the Orchestra, which shall not be unreasonably withheld, a maximum of ten (10) minutes of audio or visual recording from any rehearsal or concert may be used for documentaries for educational distribution or for use by the United States Information Agency for foreign distribution under the aegis of the United States Government. If such material is subsequently telecast by the Public Broadcasting System or broadcast on commercial television, the Orchestra shall be paid at the applicable A. F. of M. rate.

#### C. FUNDRAISING USES

All radio tapes and television sound and visual tracks (together or separately) may be used by the Society for its fund-raising, publicity, and promotional purposes at no additional payment. Such use may include, for example, radio and television advertisements, the broadcasting of such recordings for fund-raising purposes and the production of special limited edition historical recordings of performances at least twenty (20) years old, and more recent performances specifically approved by the Orchestra which are used specifically for fund-raising, subject to the approval of the A. F. of M.

#### D. "LIVE FROM LINCOLN CENTER"

Regarding "Live from Lincoln Center": The Society shall have the right to use film or taped material for intermission or promotional purposes of "Live from Lincoln Center" broadcasts.

#### E. BROADCAST TAPES FOR PERFORMERS AND COMPOSERS

Copies of broadcast tapes may be made available to performers and composers of works performed for non-commercial study and non-public promotional purposes at no additional payment.

#### F. RESTRICTION ON USE AGAINST MUSICIANS

The Union's permission granted herein to the Society to use any taped, recorded or filmed material is granted on the condition that no such taped, recorded or filmed material may be used against any Player for purposes of discharge, demotion or other discipline.

#### G. PHONOGRAPH RECORDING SESSIONS

Each member of the Orchestra shall be available for phonograph recording sessions as scheduled by the Society. Each Musician shall be compensated for those sessions in accordance with the applicable A. F. of M. agreement.

#### H. MEDIA EVENTS ON TOUR

With respect to unauthorized use of ancillary media events on tour, Society will use its best efforts to ensure that Musicians receive payment pursuant to the applicable A. F. of M. agreement.

### **ARTICLE XIII: CONDUCTOR**

The Conductor shall be in full charge of all rehearsals and performances, with full power to regulate all matters connected therewith, including the pitch of the Orchestra. Each Player shall, to the best of their ability, comply with all instructions of the Conductor given at any rehearsal or performance, including but without limitation thereto, instructions with respect to seating, music, and performance. No member shall leave the Orchestra during a rehearsal or performance without the Conductor's or Personnel Manager's permission, unless such departure is occasioned by illness, in which case the member shall present a doctor's certificate upon their return to duty.

### **ARTICLE XIV: RE-ENGAGEMENT**

If the Society desires not to engage a member of the Orchestra for the following year (years computed September 21 to September 20), it must give written notice to that effect to said member by February 15th prior to the beginning of the year in question; otherwise, said member shall be deemed automatically re-engaged for the following year. The Society, however, will endeavor whenever possible to give the Orchestra member concerned one year's dismissal notice.

The above provision shall not apply during the first two years of an Orchestra member's tenure. During that period the Orchestra member shall be considered a probationary employee, and the Society shall be permitted, in its sole discretion, to refuse to re-engage the member of the Orchestra for a new year provided it gives written notice to that effect within 17 months after the Musician's employment date.

If a member of the Orchestra does not wish to continue with the Orchestra for the following year, they must give written notice to that effect to the management by February 15th prior to the beginning of the new year; otherwise, they shall be deemed to have automatically accepted engagement for the new year.

### **ARTICLE XV: REVIEW AND ARBITRATION**

#### **A. DISMISSAL REVIEW AND ARBITRATION**

Review of all anticipated cases of termination from the Orchestra shall be as follows:

In the event a notice of termination is given to any Orchestra member in accordance with Article XIV above, a copy of such notice shall be mailed to the Union by registered mail within two (2) weeks after it is mailed to the member. If the individual concerned protests such termination, the Union shall then instruct the Orchestra Committee to call a meeting of the Orchestra so that a Dismissal Review Committee of nine (9) shall be elected. The Union, in conjunction with the Dismissal Review Committee and the Society, shall meet immediately to settle the dispute. If the matter is not settled within two (2) weeks after notice to the Union, then the propriety of the termination may be submitted to arbitration by the Union within sixty (60) days after receipt of said notice, under the Voluntary Labor Arbitration Rules of the American Arbitration Association. The standard of proof applicable to any disputes adjudicated pursuant to this section will be the "preponderance of evidence" standard. The decision of the Arbitrator shall be final and binding upon the Society, the Union, and the individual Orchestra member involved, and the costs of the arbitration shall be borne equally by the Society and the Union. The provisions of this Section A shall apply to all members of the Orchestra except probationary employees.

#### **B. RESOLUTION OF OTHER DISPUTES**

##### **Step 1. Orchestra Committee**

In the event of any dispute, difference, grievance or controversy arising under the terms of this Agreement or with respect to its interpretation or application, or with respect to the terms and conditions of employment between the Orchestra Committee and the Society, they shall make an earnest endeavor to adjust such dispute by a meeting between the Orchestra Committee and the Society.

##### **Step 2. Meeting Among Society, Orchestra Committee, and Union**

In the event of a failure to adjust the dispute, it shall be the subject of a meeting within three days after such failure among the Orchestra Committee, the Executive Board of the Union, and the Society.

### Step 3. Arbitration

In the event that the dispute should then remain unresolved, it may be submitted by the Union or the Society to an Arbitrator appointed by the American Arbitration Association in accordance with its Voluntary Labor Arbitration Rules.

The standard of proof applicable to any disputes adjudicated pursuant to this section will be the “preponderance of evidence” standard. The decision of the Arbitrator shall be final and binding upon the Society, the Union and the individual Orchestra member involved, and the costs shall be borne equally by the Union and the Society.

## **ARTICLE XVI: DISABILITY, SICK, MATERNITY, PARENTAL & FAMILY LEAVE**

With regard to all sick, disability, and family leaves, Orchestra members are required to fully comply with all reasonable administrative requirements of the Society, third-party providers, and the law.

### **A. SICK LEAVE**

In the event of disability or illness of an Orchestra member, the Society agrees to pay such member their full salary for thirteen (13) weeks. If the member is deemed medically unable to work once full sick pay is exhausted, the Society will pay minimum scale to the member until the member has been medically unable to work for a total of 26 weeks.

In the event there is a separate, unrelated disability or illness after sick leave is exhausted, the member may receive payment of minimum scale for up to the period they would be eligible for long-term disability. The Society will require appropriate documentation and/or approval by the disability carrier to issue these payments.

Sick leave resulting from the COVID-19 virus shall not count toward the above limitations.

### **B. MEDICAL LEAVE FOR BIRTHING MOTHERS**

Birthing mothers are eligible for up to 12 weeks’ medical leave at full salary contingent upon completion of disability forms.

### **C. DISABILITY**

Members are eligible for coverage of 66% of minimum scale, currently a maximum of \$8,442 per month, after an elimination period of 180 days.

### **D. PARENTAL & FAMILY LEAVE**

All new parents (including birth and non-birth mothers, fathers) are eligible for four (4) weeks’ family leave at full salary to run concurrent with New York State Paid Family Leave, plus an additional eight (8) weeks at minimum scale to run concurrent with New York State Paid Family Leave.

## **ARTICLE XVII: FORCE MAJEURE**

It is further agreed that if war, national calamity, force majeure, or other matters beyond the control of the Society, shall make it necessary for the Society to suspend or terminate the maintenance of the Orchestra and the giving of public performance thereby, the Society may terminate its employment of said Orchestra by giving two weeks’ written notice to each member of said Orchestra and to the Union. If during this two week period the bar to further public performance is removed, then this Agreement shall continue to remain in full force and effect; otherwise the Society shall be relieved of any further obligation thereunder. The intent of the parties in adopting this provision is that fair opportunity be afforded, both to the Society and the Union, within which to try and remove the reason advanced as justification for suspension of performance.

## **ARTICLE XVIII: A. F. OF M. AND LOCAL UNION CONSTITUTIONS**

It is further understood that nothing in this Agreement shall be construed to interfere with any obligations which any of the members of the Orchestra personnel owe to the American Federation of Musicians or to the Union by reason of any prior obligation to either of said organizations as members thereof. It is further understood that the Constitution, By-Laws, Rules and Regulations of the A. F. of M. and the Local and all proper amendments thereto (such amendments to be communicated to the Society as soon as they are made) shall be deemed a part of this Agreement except to the extent they may be contrary to the provisions hereof. New regulations affecting the Society passed by the Union during the period of a contract must be negotiated with the Society before the provisions can become applicable in whole or in part.

## **ARTICLE XIX: NON-DISCRIMINATION**

There shall be no discrimination in employment because of race, creed, color, sex, age, union activity, national origin, handicap, marital status, sexual orientation, gender identity affectional preference, disability, or citizenship status. The Society will not give concerts before segregated audiences.

## **ARTICLE XX: RESPONSIBILITY OF THE SOCIETY**

The Musician relies solely upon the responsibility of the Society as a corporation, and upon its corporate assets and property, for the performance of this Agreement and agrees that no member of the Society's Board of Directors, Officers or Managers shall in any event be or become personally liable hereunder.

## **ARTICLE XXI: GENERAL**

### **A. NO VIOLATION OF LAW**

Nothing herein contained shall require or be construed to require either party to violate any law which is applicable to the subject matter of this Agreement.

### **B. TEMPERATURE AND LIGHTING**

At all services of the Orchestra, including recording sessions, the Society will use its best efforts to assure that appropriate lighting and temperature conditions are maintained.

### **C. RELIEF FOR SECOND WIND, HORN, AND TRUMPET PLAYERS**

The Society will undertake to work out with the Music Director or Conductor, the Personnel Manager, and the Section, some occasions on which relief can be given to the second Players in the woodwind and brass sections. The relief shall be comprised of a minimum of three (3) weeks distributed as evenly as possible throughout the year and assigned as early in each season as possible. It is understood that such relief shall be achieved by participation in the relief process by all members of each individual section and it is understood that all members of each section will make their services available so that this relief can be afforded.

Effective in the 2014-15 season, the Society will provide three (3) annual weeks of additional relief for Associate Principal Musicians, the (1) Utility Trumpet position and the (1) Utility Horn position, during which the Musician in question will not be required to cover. The three (3) annual weeks of relief shall be inclusive of, not in addition to, any guaranteed relief or vacation weeks in individual musician contracts.

### **D. ARTISTIC ADVISORY COMMITTEE**

Not less than four (4) times a year, a committee from the Orchestra consisting of not more than six (6) members elected by the Orchestra shall meet with a committee designated by the Society to express views on artistic policy. This Artistic Advisory Committee shall not represent the Orchestra with respect to any matters within the purview of the Union or the Orchestra Committee as set forth in Article XI above.

### **E. 12-MONTH LEAVES OF ABSENCE**



The Society will grant, in its sole discretion, leaves of absence without pay for a 12-month period under the following circumstances:

Leaves of absence can be granted only when the Society is able to engage a substitute whom it deems acceptable. Leaves of absence will not be granted in any given season to more than one section head, to more than one person within a given instrumental section, or to more than a total of three members of the Orchestra. In case of receipt of more applications than can be accommodated in any given year, priority will be given to seniority in years of service, all other factors being equal. A leave of absence without pay will not be granted to the same Musician more than once each seven (7) years.

To be eligible for such leave, a Musician must have completed seven (7) years of continuous service with the Orchestra. Applications must be filed not later than September 1 for the succeeding season, and the Society shall report on approval or denial of the request not later than January 1 following receipt of the application.

A Musician on leave of absence shall receive no salary or other compensation during the period of the leave but shall receive all fringe benefits, except vacation pay, during the leave.

The Society agrees to comply with the provisions of the Family Leave Act, which shall be deemed incorporated into the collective bargaining agreement.

## F. SABBATICAL LEAVE

In the interest of attracting and keeping outstanding Players, maintaining high playing standards and aiding individual and collective musical growth within the Orchestra, a sabbatical leave program has been established. One Musician per Season shall be allowed an opportunity to take a sabbatical not in excess of six (6) months. Such sabbatical leave shall be granted at the sole discretion of the Society pursuant to the mutually agreed upon procedure. Sabbatical compensation shall be 50% of base scale for that season. All fringe benefits shall continue as in XXI: E. For the duration of this agreement, upon a Musician's return from work following a sabbatical, the Musician will receive pro-rata vacation plus 50% of scale for the balance of the vacation.

### 1. Conditions

The conditions under which an applicant may be granted a sabbatical leave are as follows:

- a. **Eligibility.** Each non-probationary Musician in the Orchestra shall be eligible for a sabbatical after every seven consecutive years of service. The applicant must sign an individual employment contract assuring their return to the Orchestra following their leave.
- b. **Purpose.** The sabbatical shall be taken for purposes of musical study, research, private practice, rest, or for solo or chamber music appearances, or other activities that offer opportunity for advancement and musical growth.
- c. **Limitations.** Sabbatical leave is not to be used for the purpose of earning additional salary. Therefore, a Musician during their sabbatical leave, may not accept anything other than casual employment with another Symphony Orchestra or institution.

### 2. Procedure

The procedure to select a Musician for Sabbatical leave shall be as follows:

- a. **Application and Notification.** Applications for sabbatical leave must be submitted no later than December 31 of the season preceding that in which the sabbatical leave is to take place. The Society shall give written notice to all applicants for sabbatical leave of their selection or rejection for such leave by March 1 and, in the case of rejection, the Society shall state their reasons in writing to the applicant. A Musician receiving a sabbatical leave shall have forty-five (45) days after receiving written notice of that leave to notify the Society as to whether or not the leave shall be taken.
- b. **Selection Criteria.** The Society shall consult with the Music Director and Orchestra Committee to review the merits of request for sabbatical leave. Applicants acceptable according to the preceding conditions shall be given preference according to the following guidelines (not listed in order of priority):

Purpose of Sabbatical leave.

Number of years' service in the Orchestra.

If necessary, every effort must be made by the applicant, Principal of the Section, and the Society to secure an outstanding Player for temporary replacement during the sabbatical leave, however, the Society shall not be required to replace such Musicians on sabbatical leave.

## G. USE OF MATERIAL CONCERNING MUSICIANS FOR PROMOTION AND ADVERTISING

As has been customary, and in accordance with the spirit of such past practice, the Society shall have the right, and the right to authorize others, to reproduce, print, publish, disseminate in any media, the names, pictures, likenesses, voices and biographical material of the Musicians in all promotion or advertising related to their services.

#### H. CALCULATION OF BENEFITS

All Benefits shall be calculated as of the first day of employment.

### ARTICLE XXII: PENSION

#### A. PENSION BENEFITS

The New York Philharmonic Orchestra Pension Fund Trustees and appropriate Society staff will administer the following benefits and related provisions

1. Pension benefits and related provisions shall be as follows:
  - a. \$2,400 per year of service for retirees on or after September 21, 2016 to a maximum annual benefit of \$72,000 for thirty (30) years of service.
2. The Society will make contributions to the Pension Fund in an amount necessary to pay the cost of the plan.
3. SPECIAL INFLATION PROTECTION

The provisions indicated in 3.a. and 3.b. shall apply only with respect to retirees whose Annuity starting date occurs during the period beginning September 21, 1995 and ending September 20, 1998.

a. Catastrophic Inflation Protection:

The cumulative, compound rate of Inflation will be calculated every year from their individual date of retirement. In the year following any year in which that rate exceeds a compound 6% rate, the retiree will receive a percent increase in their pension equal to the difference of the compounded rate and 6%, but not to exceed 2% in any one year. Inflation will be measured using the CPI-U measurement.

b. Longevity Inflation Protection:

When an index of cumulative inflation (calculated using CPI-U less 2% each year) reaches 200 (with 100 being the rate at the date of retirement), then annual increases to the pension benefit shall be granted so that the index will be maintained at 200. This longevity inflation protection is provided on the assumption that its cost will not exceed \$10,000 per year. If further analysis results in a higher cost for this benefit, the Pension Trustees will be authorized to make adjustments in this benefit while at the same time providing the best longevity inflation protection possible within the \$10,000 cost limitation.

### ARTICLE XXIII: HEALTH PLAN AND OTHER BENEFITS

#### A. HEALTH AND DENTAL INSURANCE

Effective January 1, 2021, the Society's health plan shall consist of comprehensive medical and dental coverage comparable to the Empire High Deductible Health Plan (HDHP) with Health Savings Account (HSA) or "HD-HSA" as outlined in item 3 of the Memorandum of Understanding dated December 1, 2020. **[Attached as Exhibit A, Item 3]**

1. , The weekly premium contribution shall be \$25/\$40/\$55 (Single / Single +1 / Family) per musician. Contributions will be on a pre-tax basis.
2. The following "dependent carve out" payments are available to Musicians who elect to have their dependents covered through other sources:
  - \$1,000 per year (paid in weekly installments) if "Single + 1" coverage is converted to "Single" coverage or if "Family" coverage is converted to "Single + 1" coverage:
  - \$2,000 per year (paid in weekly installments) if "Family" coverage is converted to "Single" coverage.



Above payments do not apply when dependents are no longer eligible for coverage under the Society's plan.

3. Society will reimburse wind and brass players for 3<sup>rd</sup> and 4<sup>th</sup> annual dental cleanings at the Empire in-network rate, and with timely submission of receipt(s).
4. Any musician currently covering a domestic partner has been 'grandfathered' in this agreement, i.e. will continue to receive domestic partner coverage for the Term of this agreement.
5. Coverage for Orchestra members who end employment with the Philharmonic on or after age 62 and have at least ten (10) years of service are eligible for the following:
  - a. Participation in the Health Reimbursement Account (HRA) Plan. The HRA plan will reimburse participants up to \$2,000 per calendar year for qualified medical expenses, including premiums paid for the purchase of Medicare Supplement Plans and Medicare Part D coverage.
  - b. The ability to buy into the Philharmonic's group health and dental insurance plan until they reach age 65. This will be administered in accordance with COBRA.

## B. OTHER INSURANCE & BENEFITS

The Society will bear the cost necessary to provide the following insurance and other benefits:

### 1. Life Insurance

Coverage to \$150,000 (maintaining triple indemnity provision.)

### 2. Instrument Insurance

Coverage to \$500,000 for all instruments.

### 3. Instrument Insurance & Loans

Musicians will not be required to pay for instrument insurance (in excess of contractual amount), or repay instrument loans until after 9/20/24. The value of instruments to be insured will be based on the value of each Musician's insured instruments as of 8/31/20.

## ARTICLE XXIV: PERSONNEL POLICIES

During the Term of this Agreement, the decision to commence an audition for an open position will rest with the Society in its sole discretion, in consultation with the Music Director and the Orchestra Committee. Procedures for auditions once commenced are unchanged. Consistent with current practice, the Society shall continue to make best efforts to hire the number of substitute musicians necessary to field an appropriate number of players in accordance with repertoire requirements and ensure the customary and usual rotation and relief within sections when vacancies in the orchestra make customary and usual rotation impossible. This provision will sunset on 9/20/2024.

### A. AUDITIONS AND RECRUITMENT

In the event of any conflicts between this paragraph A and the Audition Side Letter (attached as Exhibit B), the policies outlined in the Audition Side Letter will govern.

It is the policy of the Society to attempt to engage the best performers available at the salaries which the Society can offer. Choosing the performing personnel is considered an important function of the Music Director, and the Society has vested complete authority for final decision regarding the choice of personnel in the Music Director.

To assist in the recruitment process, notice of impending openings in the sections will be advertised nationally, unless there are very unusual circumstances. Auditions will be held, and all applicants who so wish will be given at least one audition. (A person not engaged by the Society who wishes at a later date to play at a subsequent audition may do so if their application is approved by the Music Director or the Auditioning Committee). It is recognized, however, that circumstances in some instances may be such that the best interests of the Orchestra may not be served by requiring auditions of every prospective new solo Player. In such instances the Music Director and Management will use their best judgment regarding the auditions.

The Society agrees to meet and confer with the Orchestra Committee to discuss issues of audition committee size, composition and

It is the intent of the Music Director and Staff to conduct confidential consultation with the Artistic Committee on artistic matters, including selection of solo personnel. In each case when a Player is being considered for a solo position without being required to go through the regular audition process, every reasonable effort will be made to discuss the situation with the Artistic Committee and the appropriate Audition Committee before the final selection is made.

At auditions the Music Director will continue to be assisted, as in the past, by members of the Orchestra. Every reasonable effort will be made to assure that all auditions are held in an acoustically proper locale. Subject to a review by each appropriate Audition Committee, it shall be the general practice to hold preliminary auditions behind screens.

All members of the Auditioning Committee shall receive payment for their services at the rate of two percent (2%) of the minimum scale per hour.

Prospective new members will be interviewed by the Staff before they are engaged.

In no instance will a public announcement be made with respect to the engagement of a new Orchestra member before such matter is discussed with the Audition Committee.

With respect to Players to be engaged after a public audition, no decisions will be made by the Music Director before the matter is discussed with the Audition Committee.

1. String Section Openings

When an opening exists in a string section (for the purposes of this paragraph only, the Violin I and Violin II sections shall be considered as one section), all members of the section who so wish shall be considered for the open position and members of the section shall be offered the opportunity to audition before the Music Director together with the Audition Committee if a member so chooses. When an opening occurs among the "non-revolving stands," members of the section involved who so wish shall indicate their desire to move up into the open position to the Personnel Manager, and the Music Director shall give first consideration to these Players in making the appointment of Players to the "non-revolving stands." If a Player wishes to be released from a position in the "non-revolving stands," they may so indicate and, operating with the above procedures, every attempt will be made to replace them; it being understood that the decision of the Music Director with regard to seating is final, and if the Music Director so chooses, the Player requesting release from the "non-revolving stands" may not be permitted to do so.

2. Probationary Musicians Policy Procedure

The following procedures will take place during the first seventeen months of all new Musicians' employment. It shall be a duty of the Orchestra Personnel Manager, in communication with the Orchestra Committee, to ensure adherence to these guidelines.

It is understood that there may be special circumstances or situations that necessitate changes or adjustments in the implementation of these guidelines.

The first seventeen months of employment are considered probationary time for all new members of the Orchestra regardless of their instrument or position.

A copy of this Policy Procedure will be given to each new Musician in the Orchestra at their orientation meeting with the Orchestra Personnel Manager.

The Orchestra Personnel Manager will have an orientation meeting with each Musician immediately upon employment. The meeting will include all aspects of the Musician's employment and responsibilities to the Orchestra and the Society.

The Orchestra Personnel Manager will meet with each Probationary Musician as deemed necessary. It is understood that the Orchestra Personnel Manager will have informal discussions with the Music Director, Section Principal, Members of the Section, and Audition Committee so that feedback may be shared, if needed, with the Probationary Musician in these meetings. The Orchestra Personnel Manager will discuss and assist with any questions and concerns the Probationary Musician may have.

The Personnel Manager and the Principal of the Section involved shall meet with the Probationary Player as necessary, but not less than once per season, to provide feedback to the player. The Personnel Manager may invite to the meeting other Audition Committee members and/or Section Players as needed.

There will be at least one meeting with the Probationary Musician, Orchestra Personnel Manager and the Music Director for the purpose of feedback and progress reports from the Music Director. The Principal of the section, at the discretion of the Music Director, will be in attendance.

During the Probationary period of employment, each Probationary Musician in the String section will play a minimum of

one Subscription series (rehearsals and concerts) on the first stand, with the Section Principal playing and Music Director conducting. One of these series must take place during the last four months of the Probationary period.

Between the eighth and twelfth month of probation, the Orchestra Committee will take a secret ballot preliminary evaluation from each tenured member of the Section involved and the Members of the Audition Committee, for the purpose of providing feedback to the Probationary player.

For each probationary musician in the fifteenth or sixteenth probationary month, the Orchestra Committee will take a secret ballot from each tenured member of the Section involved, and the Members of the Audition Committee, on whether or not tenure will be granted. The ballots will be prepared by the Orchestra Personnel Manager, who shall distribute the ballots to each voting Member. The Orchestra Personnel Office shall provide a sealed box for the completed ballots. The sealed box of ballots will be given to the Orchestra Committee and the Committee will compile the results. The voting shall be anonymous, and the results shall be kept confidential by the Orchestra Committee, to be shared only with the Orchestra Personnel Manager and the Music Director, at the Committee's discretion. Ballots and other written material will be kept in a confidential file in the Orchestra Personnel Office and may be accessed only by the Orchestra Committee.

In certain exceptional circumstances the Music Director, the Orchestra Committee, and the Society may agree to extend a player's probationary period for up to an additional twelve months.

The tenure review meeting with the Music Director will be held with the Orchestra Committee, Section Principal, and Orchestra Personnel Manager. The results of this meeting shall be given to the Probationary Musician immediately.

## B. JOINT COMMITTEE

The parties agree to the establishment of a joint committee to explore and make recommendations to increase the hiring of Musicians from diverse backgrounds as regular and/or substitute musicians, as well as to make recommendations to expand opportunities for auditions and musical training.

## C. AVAILABILITY OF MUSICIANS GIVEN TIME OFF

Musicians given time off shall be reasonably available to the Orchestra and expected to report to work immediately when there are unanticipated changes in personnel requirements.

## D. STRING SECTION POLICY

The Society's general policy regarding the strings shall be as follows:

### 1. Seating

The seating of all members of the string sections other than the first three stands of the first violin section and the first two stands of the other string sections shall be on a periodically revolving basis throughout the year.

### 2. Revolving Strings

The revolving system shall be continued, unless changes therein are mutually agreed upon. Members in the section who revolve shall be listed in the program in alphabetical order. Except as otherwise provided herein, the seating of the members of the string sections will continue to be determined by the Music Director.

### 3. Move-up Pay

All string Players will move up whenever required. Move-up pay will be paid a) to those who move up into a titled position in any section and b) to revolving Players who move on to a non-revolving chair for any reason for an entire concert or for at least two works in a concert (\$50 per week; prorated per concert).

### 4. Filling of Vacancies

When an opening occurs in the sections, auditions will be held unless there is a moving up of the next-in-line. Auditioning will be on a voluntary basis. New members coming into the Orchestra may be considered with other Players.

### 5. String Section Premium Pay

Each member of the string section shall receive at least twenty dollars (\$20) above the minimum scale of pay.

### 6. "First Call" Substitutes

A "first call" list of substitutes shall be formed, in consultation with the Section Leader and the Substitute Review Committee from each section, of Musicians deemed acceptable by the Music Director to substitute in all reduced string works.

This “first call” list of Musicians eligible to play all reduced string works was formed from the existing substitute list for the first subscription season of the prior Agreement (1981-1985). During the first subscription season that a substitute is on this “first call” list, they shall be deemed probationary only insofar as their eligibility to play reduced string works restricted in the past to Philharmonic personnel. If at any time any “first call” list is deemed by the Music Director not to be of sufficient size, the Society may hold auditions in accordance with standard audition procedures under this Agreement and may add Musicians to the “first call” list from these auditions or from other sources in consultation with the Section Leader and the Substitute Review Committee. At the end of the first subscription season of this Agreement the Music Director, in consultation with the same parties mentioned above in this paragraph, shall decide upon players who then shall have the right of first refusal as “first call” substitutes. Those probationary “first call” substitutes who are not granted the right of first refusal shall be given notice of same and the opportunity to audition for the “first call” list in accordance with standard audition procedures under this Agreement. Those Musicians on the “first call” list will be ranked in order of those to be called for all openings for string substitutes, said ranking subject to periodic review by the Music Director in consultation with the Section Leader and Substitute Review Committee. Any disputes arising out of these provisions shall be resolved by the parties above (the Music Director, Section Leader and Substitute Review Committee), but shall not be subject to the arbitration procedures of this agreement.

7. Other Substitutes

Substitutes will be hired in the case of absence of one week or longer caused by optional weeks, illness, pregnancy-family leave, jury duty or other causes, with the exception of relief weeks, when necessary in order to maintain the string complement as defined by the Music Director for each program. Substitutes from the “first call” list will play all works on each program. In the event none of the substitutes from the “first call” list is available, other substitutes shall be hired who will play all works except those works designated by the Music Director as to be played by Philharmonic and “first call” personnel only.

8. Seating on Tour

Regarding touring, string Players shall remain in their positions for the duration of the tour, including rehearsals and concerts of tour program repertoire prior thereto.

E. TIME OFF FOR STRING PLAYERS

Policy regarding time off for all string Players shall be as follows:

1. General

The parties will use their best efforts to provide that time off for all members of each string section shall be evenly distributed insofar as is possible for each year. It is understood that circumstances may arise that make it impossible to equalize the time off between frozen and rotating players in each section. A “pool” of time off, as described below, will be created at the beginning of each season. The distribution of time off from this “pool” will be accomplished by a point system to be administered by a Musician for each string section who will work with the Personnel Manager. Time off for Principal Players of the string section will be decided upon in consultation with the Music Director as to when it is appropriate for those Players to be off. This may include accompaniments for standard concertos. It is understood that time off for these Players may not be equal to time off for non-principal Players in each season.

2. A “pool” of time off will be created by a combination of the following:

- a. Repertoire as programmed;
- b. Reduction in the number of Players required for a composition as determined for artistic reasons by the Music Director or Conductor of that particular concert;
- c. Reduction by the Music Director in works that would normally require the full string complement, but may be performed by less in order to provide additional time off for string Players. The Music Director will determine at the beginning of each season those works, for which they would normally require the full string complement, but which may be performed with less string Players in each section in order to provide additional time off for string Players; and
- d. The hiring of substitute Musicians as necessary.

3. The administration of the time off system shall be as follows:

- a. The Musician chosen to administer the time-off system in each section, the Record Keeper, will serve for a full contract season(s). Each season, there will be a meeting of the full section and, if deemed necessary, there will be an election in the Spring by each string section for the next season’s Record Keeper. The Record Keeper may be a member of any section. The Record Keeper will receive \$25 per week for their service and shall provide for the administration of the time off system during their absence.
- b. The Record Keeper shall use a format determined by the Personnel Manager to assure uniformity and impartiality within each string section. All lists and accounts shall be legible and available for any section member to examine. Each week during the winter season, the points for each section shall be posted current to the previous week’s work.

- c. The Personnel Manager shall provide each Record Keeper with the upcoming string complements. The Record Keeper shall then prepare reduction lists which indicate the order of the Musicians to be scheduled for time off. This list shall include all members of the section in the event any changes occur.
- d. The point system for determining time off will be based on the number of minutes in a service that each Musician is on stage playing compositions. An account shall be kept in the name of each Musician showing the number of points they earned to date. Each point shall equal five minutes or fraction thereof. The number of points accumulated will be a guide and may or may not be the primary factor in determining who will have time off.

4. Review of the System

For the purpose of reviewing the ongoing working of the time off system, the Personnel Manager shall call a meeting in the Spring of each year of the Record Keepers from each section, a non-principal member of each section, selected by the section, a member of the Orchestra Committee selected by the Committee, and the Personnel Manager to discuss ways and means to improve the system, including discussion of the problems in the system brought forth by the Players. Although it is understood that this group is not empowered to make any changes, a report will be made of the discussion, and will be distributed to all members of the respective sections, Music Director, and Managing Director.

5. It is understood that the total complement of Players assigned shall be as specified for any composition.

IN WITNESS WHEREOF, the parties below hereunto set their hands and seals the day and year first above written.

**ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, A. F. of M.**



DFB860B5365143F...  
Adam Krauthamer, President

**THE PHILHARMONIC-SYMPHONY SOCIETY OF NEW YORK, INC.**

DocuSigned by:



DFB860B5365143F...  
Deborah Borda, President & CEO

## EXHIBIT A

Memorandum of Understanding  
December 1, 2020

The Philharmonic-Symphony Society of New York, Inc. (the “Philharmonic”), the Philharmonic Orchestra Negotiating Committee, and the Associated Musicians of Greater New York Local 802, American Federation of Musicians, hereby agree as follows, subject to subsequent documentation and ratification by the Philharmonic Orchestra:

The following changes will be made to the Collective Bargaining Agreement between the parties in effect from September 21, 2017 to September 20, 2020. In all other respects that Agreement shall remain unchanged.

1. Term: 9/21/20 – 9/20/24

2. Compensation:

A. Orchestra members shall be paid at the following percentages of the contractual scale and overscale rates in effect as of March 1, 2020:

	<u>2020/21</u>	<u>2021/22</u>	<u>2022/23</u>	<u>2023/24</u>
Base	75%	75%	75%	80%/90%
Overscale	35%	35%	35%	40%/45%
String	100%	100%		100%
Longevity	75%	75%	100%	75%

The base and overscale percentages for the 2023/24 season will go into effect on September 21, 2023 and March 21, 2024, respectively.

B. Contractual increases in seniority pay and previously negotiated overscale increases (subject to agreed-upon reductions, above) will be maintained throughout the term.

C. Compensation Adjustment: see attached.

3. Health Insurance: Effective January 1, 2021 the health insurance plan shall change to a high deductible/health savings account as described in the attached. The parties will discuss and agree upon the timing of the HSA contributions.

4. Media: See attached agreement.

5. Auditions/Filling of Positions:

During the term of the Agreement, the decision to commence an audition for an open position will rest with the Society in its sole discretion, in consultation with the Music Director and the Orchestra Committee. Procedures for auditions once commenced are unchanged. Consistent with current practice, the Society shall continue to make best efforts to hire the number of substitute musicians necessary to field an appropriate number of players in accordance with repertoire requirements and ensure the customary and usual rotation and relief within sections when vacancies in the orchestra make customary and usual rotation impossible. This provision will sunset on 9/20/2024.

6. Sunday Services: The following language supersedes and replaces Article VII(C)(1)(a) through (f):

Effective 9/21/20, and for each year of the contract thereafter, a total of ten (10) Sunday performances are permitted, subject to the following work rules:

- a. No Sunday morning services are permitted if preceded by an evening service the previous Saturday
  - b. Sunday services will be scheduled as far in advance as reasonably possible, and in consultation with the Orchestra Committee or other appropriate committee;
  - c. There will be no more than three (3) services per weekend;
  - d. Rehearsals for a subsequent week's program shall be permitted on Sunday only with the prior approval of the Orchestra Committee.
  - e. Any Sunday performance must be immediately followed by a Monday off;
  - f. Immediately following a three (3) service weekend, Musicians must be given two (2) consecutive days (Monday and Tuesday) off;
  - g. If Sunday services are included on two consecutive weeks, Musicians must be given two (2) consecutive days (Monday and Tuesday) off after the first Sunday, regardless of whether that Sunday is part of the three (3) service weekend;
  - h. The subscription season will have at least fifteen (15) weeks with two (2) consecutive days off and no more than eight (8) six (6) day weeks; and
  - i. Except as provided herein, all current contractual provisions will apply to Sunday work.
7. Education and Community Engagement Services: See attached.
8. Training: replace Article VI, O, with the following:

During each Season the Society may schedule training sessions outside of or within the regular rehearsal or concert schedule for each of the following areas: anti-harassment; diversity, equity and inclusion; and safety. Sessions can either be on an individual



musician, small group or full orchestra basis. Scheduling will be done with the approval of the Orchestra Committee.

9. Five (5) extra services: Effective 9/21/20, and for each season of the Agreement, up to five (5) extra concert or rehearsal services in excess of the basic workweek will be included in the base weekly salary. This proposal will sunset on 9/20/2024.
10. Effective 9/21/20, the contractual provision related to the scheduling of three (3) “free” fundraising concerts will change to the following:  
  
A total of eight (8) “free” services with no more than three (3) fundraising concerts may be scheduled in each season.
11. Two Concerts Permitted on the Same Day: See attached.
12. Payroll: Effective with the week including April 1, 2021, payroll will move to an every-other-week schedule, with a pay date of Friday. Except for tours which include mainland China (including Hong Kong), advance pay for touring and vacation will be discontinued. For tours that include other countries, at least 60 days prior to departure, the Society will advise the Orchestra and/or Tour Committees as to whether any of the countries to be visited pose personal data security risks. The advice will be based on U.S. government advisories, such as those given by the Commerce Department’s Bureau of Industry and Security (BIS), as well as the country “block list” that the Society maintains for its own network security. Should a country pose such a risk, the Society will recommend a Virtual Private Network (VPN) for use by the musicians while on tour. The Society will reimburse the musicians for up to one month of the fee for the recommended VPN during a China tour (including Hong Kong) and for a month of the VPN fee while the Musicians are on non-China tours where there is a data security risk. Notice will be provided to musicians at least 30 days prior to departure. The Tour Committee will meet on at least an annual basis to review the relevant technology.
13. Paid Leave: All member of the orchestra will receive no more than three (3) weeks of paid leave (in excess of vacation and break weeks) through relief weeks or optional weeks in individual agreements. Leave for “on call” instrumentation purposes will continue to be paid. Any relief weeks earned through excess education/community engagement services are excluded from this cap. Commencing on 9/21/23, musicians will have the option of negotiating an alternative number of paid leave weeks in their individual agreements.
14. Chamber Music: The existing Chamber Music side letter will be extended through 9/20/24. There will be a reduced rate of \$600 for educational events, community engagement events, and donor cultivation events attended by fewer than 75 people. VYPCs and Lincoln Center reimbursable events will be paid pursuant to past practice. Repeat school or community based VYPCs will be paid at the \$600 rate.
15. Disability, Sick, Maternity and Parental Leave: see attached.



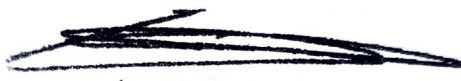
16. Doubling: See attached.
17. Dispute Resolution Standard: The standard of proof applicable to any disputes adjudicated pursuant to the dispute resolution provisions will be the “preponderance of evidence” standard.
18. Joint Committee: The parties agree to the establishment of a joint committee to explore and make recommendations to increase the hiring of musicians from diverse backgrounds as regular and/or substitute musicians, as well as to make recommendations to expand opportunities for auditions and musical training. The committee’s report and recommendations will be finalized no later than March 1, 2021.
19. Instrument Insurance/Loans: Musicians will not be required to pay for instrument insurance (in excess of contractual amount), or repay instruments loans until after 9/20/24. The value of instruments to be insured will be based on the value of each musician’s insured instruments as of 8/31/20.
20. Independent Financial Advisor: Independent Financial Advisor: The parties agree to retain Eugene Keilin as the Independent Financial Analyst (“IFA”) for the duration of this Agreement to provide aregular, independent analysis of all financial information relevant to Musician compensation under this Agreement.
  - a. The IFA will have access to all financial documents and information relevant to the calculation of the amounts due under the additional compensation provision. Such information will be the same as or consistent with the information provided to the Board of Directors. Subject to a continuation of the existing confidentiality agreement, the IFA is authorized to share this information with the Philharmonic Orchestra Committee on at least a quarterly basis.
  - b. The Philharmonic and the IFA shall agree upon the IFA’s compensation for services rendered under this Agreement.
  - c. If Mr. Keilin is unable to carry out his responsibilities under this Agreement for any reason, his successor will be \_\_\_\_\_, who will perform services on the same basis and with the same confidentiality restrictions as set forth above. Should \_\_\_\_\_ become unavailable, the Philharmonic and the Philharmonic Orchestra Committee will agree on another individual to act as the IFA.

For the New York Philharmonic:



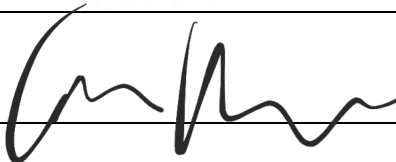
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For Local 802, AFM:



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For the New York Philharmonic Orchestra:



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**Memorandum of Understanding New York Philharmonic, Local 802 AFM  
December 1, 2020**

## **2. Compensation Adjustment**

1. The following financial projections shall be used for the compensation adjustment formula.  
(\$ millions)

FY:	<u>20/21</u>	<u>21/22</u>	<u>Total</u>	<u>22/23</u>	<u>23/24</u>
Subscription Series Ticketing & Total Fee Rev.	\$0	\$10.4	\$10.4	\$21.8	\$18.7
6% Endowment Draw*	\$10.6	\$10.7	\$21.3	\$11.0	\$11.3
Gov't Assistance	\$3.7	\$0	\$3.7	\$0	\$0
Orch. Pension Contrib.	\$4.6	\$5.2	\$9.8	\$5.3	\$5.4
Forward Fund Usage **	\$16.2	\$20.9	\$37.1	\$7.6	\$10.6

2. Subject to paragraphs 3, the compensation adjustment formula shall be as follows for the FY 20/21 and 21/22 seasons.

On October 15, 2022, musicians will be eligible for a lump sum bonus equal to 50% of the net total budgetary improvement, ("50% of the net total budgetary improvement" is referred to as NBI), if any, of the following budget component net totals during the two seasons (FY 20/21 and 21/22):

Subscription Series ticketing and total fee revenue

6% Endowment Draw

Gov't relief assistance

Orchestra Pension Contributions

Musician staffing savings, net of replacement costs if fewer than 90 musicians (savings analysis to be provided separately).

3. Calculation of Forward Fund Reduction Amount (FFRA) and payment methodology.

The Forward Fund Reduction Amount (FFRA, or reduction in cash deficit) shall be the difference between the actual Forward Fund usage in a year and the projected Forward Fund usage in item 1, net of any carry forward of accumulated excess usage in prior years ("Carry Forward"). If the

**Memorandum of Understanding New York Philharmonic, Local 802 AFM  
December 1, 2020**

FFRA is greater than NBI, the lump sum bonus payment will be the greater of NBI or 50% of the FFRA. If FFRA is less than NBI, the lump sum bonus payment will be the lesser of the amount by which the NBI exceeds the FFRA, or \$750,000 even if there is no FFRA. Lump sum bonus payments of up to \$750,000 when no FFRA is present will not be treated as excess Forward Fund usage in the Carry Forward noted in this paragraph. The intended workings of this paragraph are illustrated in the attached examples.

4. For the FY 22/23 and 23/24 seasons, the procedure and calculation shall be as follows:

On October 15 following the conclusion of each fiscal year (e.g., for the FY 22/23 season, on October 15, 2023) musicians will be eligible for a lump sum payment as described in items 2 and 3, but based on each year's annual results, rather than the two-year total for FYs 20/21 and 21/22.

5. Bonus monies from the formula in items 2-4 will be applied first to weekly scale wages until 100% of scale is reached; thereafter, the Society and Orchestra Committee, in consultation with the IFA, will jointly determine the allocation of additional compensation between seniority pay and overscale.

\*Based on current policy of 12 quarter rolling average.

\*\* Projected Forward Fund usage is exactly equivalent to projected cash deficits, and actual Forward Fund usage is exactly equivalent to actual cash deficits, regardless of how much of the Forward Fund is actually raised or how much may be released as recognized revenue each year to offset the operating deficit. Cash deficits are defined as GAAP based operating results as shown in the unrestricted operating column of the Statement of Activities included in the Society's Financial Statements, plus cash spent on non-DGH capital projects, the net difference between GAAP-based pension expense and actual cash pension contributions, and interest and issuance costs for the DGH project financing facility.

Scenarios for Compensation Adjustment

**Scenario 1**

	Year 1	Year 2	Year 1	NBI pays out even without reduced FF usage (FFRA)
			Year 2	NBI payout from Year 1 does not carry forward to Year 2; NBI in year 2 pays out at full \$500K
NBI	1,000,000	500,000		
FF Budget	10,000,000	10,000,000		
FF Usage	10,000,000	9,500,000		
FFRA	-	500,000		
Carry Forward	-	-		
Net FFRA	-	500,000		
Payout	750,000	500,000		

**Scenario 2**

	Year 1	Year 2	Year 1	net FFRA will carry forward to year 2
			Year 2	Carry Forward offsets FFRA, reducing to \$1MM; NBI payout at \$1M
NBI	-	2,000,000		
FF Budget	10,000,000	10,000,000		
FF Usage	11,000,000	8,000,000		
FFRA	(1,000,000)	2,000,000		
Carry Forward	-	(1,000,000)		
Net FFRA	(1,000,000)	1,000,000		
Payout	-	1,000,000		

**Scenario 3**

	Year 1	Year 2	Year 1	NBI payout capped at \$750K due to negative FFRA
			Year 2	Negative FFRA in Year 1 carried forward to net FFRA in Year 2. No FFRA in Year 2 but NBI bonus capped at \$750K regardless.
NBI	1,000,000	1,500,000		
FF Budget	10,000,000	10,000,000		
FF Usage	11,000,000	9,000,000		
FFRA	(1,000,000)	1,000,000		
Carry Forward	-	(1,000,000)		
Net FFRA	(1,000,000)	-		
Payout	750,000	750,000		

**Scenario 4**

	Year 1	Year 2	Year 1	FFRA exceeds NBI savings; payouts higher
			Year 2	FFRA exceeds NBI savings; payouts higher
NBI	1,000,000	1,000,000		
FF Budget	10,000,000	10,000,000		
FF Usage	5,000,000	7,000,000		
FFRA	5,000,000	3,000,000		
Carry Forward	-	-		
Net FFRA	5,000,000	3,000,000		
Payout	2,500,000	1,500,000		

**Scenario 5**

	Year 1	Year 2	Year 1	No FFRA, but NBI still pays out to max of \$750K
			Year 2	No Carry Forward; no NBI but FFRA pays out
NBI	1,000,000	-		
FF Budget	10,000,000	10,000,000		
FF Usage	10,000,000	9,500,000		
FFRA	-	500,000		
Carry Forward	-	-		
Net FFRA	-	500,000		
Payout	750,000	250,000		



**Jaap van Zweden**  
Music Director

**Peter W. May and Oscar L. Tang**  
Co-Chairmen

**Deborah Borda**  
President and Chief Executive Officer

#### ITEM 4. HEALTHCARE

A new High Deductible Health Plan (HDHP) with Health Savings Account (HSA) or “HD-HSA” will become effective January 1, 2021.

The Philharmonic will contribute to HSA as follows: \$700 participants with single coverage and \$1,400 for participants with family coverage.

This funding will be **available in its entirety** as soon as practical in 2021.

The funding schedule in future years will be determined at a later date.

See the following pages for a summary of the plan.



An Anthem Company

Empire BlueCross BlueShield

The Philharmonic Symphony Society of New York

Your Plan: Orchestra Plan

Your Network: PPO

Covered Medical Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
<b>Overall Deductible</b>	\$1,400 person / \$2,800 family	\$1,400 person / \$2,800 family
<b>Out-of-Pocket Limit</b>	\$2,000 person / \$4,500 family	\$2,000 person / \$4,500 family
The family deductible and out-of-pocket maximum are non-embedded meaning the cost shares of all family members apply to one shared family deductible and one shared family out-of-pocket maximum. The individual deductible and individual out-of-pocket maximum only apply to individuals enrolled under single coverage.		
<b>Preventive Care / Screening / Immunization</b>	No charge	20% coinsurance after deductible is met
<b><u>Doctor Home and Office Services</u></b>		
<b>Primary Care Visit</b>	\$30 copay after deductible is met	20% coinsurance after deductible is met
<b>Specialist Care Visit</b>	\$30 copay after deductible is met	20% coinsurance after deductible is met
<b>Prenatal and Post-natal Care</b>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b><u>Other Practitioner Visits:</u></b>		
Retail Health Clinic	\$30 copay after deductible is met	20% coinsurance after deductible is met
On-line Visit <i>Includes Mental/Behavioral Health and Substance Abuse</i>	\$30 copay after deductible is met	20% coinsurance after deductible is met
Manipulation Therapy	\$30 copay after deductible is met	20% coinsurance after deductible is met



Covered Medical Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
Acupuncture <i>Coverage is limited to 20 visits per year.</i>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b><u>Other Services in an Office:</u></b>		
Allergy Testing	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Chemo/Radiation Therapy - PCP	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Chemo/Radiation Therapy - Specialist	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Dialysis/Hemodialysis	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Prescription Drugs - <i>Dispensed in the office</i>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b><u>Diagnostic Services</u></b>		
<b>Lab:</b>		
Office	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Freestanding Lab/Reference Lab	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Outpatient Hospital	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>X-Ray:</b>		
Office	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Outpatient Hospital	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>Advanced Diagnostic Imaging:</b>		
Office	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Outpatient Hospital	0% coinsurance after deductible is met	20% coinsurance after deductible is met

Covered Medical Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
<b><u>Emergency and Urgent Care</u></b>		
<b>Urgent Care</b>	\$25 copay after deductible is met	Covered as In-Network
<b>Emergency Room Facility Services</b> <i>Copay waived if admitted.</i>	\$25 copay after deductible is met	Covered as In-Network
<b>Emergency Room Doctor and Other Services</b>	0% coinsurance after deductible is met	Covered as In-Network
<b><u>Ambulance</u></b>	0% coinsurance after deductible is met	Covered as In-Network
<b><u>Outpatient Mental/Behavioral Health and Substance Abuse</u></b>		
<b>Doctor Office Visit</b>	\$30 copay after deductible is met	20% coinsurance after deductible is met
<b>Facility Visit:</b>		
Facility Fees	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Doctor Services	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b><u>Outpatient Surgery</u></b>		
<b>Facility Fees:</b>		
Hospital	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Freestanding Surgical Center	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>Doctor and Other Services:</b>		
Hospital	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Freestanding Surgical Center	0% coinsurance after deductible is met	20% coinsurance after deductible is met

Covered Medical Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
<b><u>Hospital (Including Maternity, Mental / Behavioral Health, Substance Abuse):</u></b> <b>Facility Fees</b>  <b>Doctor and other services</b>	0% coinsurance after deductible is met  0% coinsurance after deductible is met	20% coinsurance after deductible is met  20% coinsurance after deductible is met
<b><u>Recovery &amp; Rehabilitation</u></b> <b>Home Health Care</b> <i>Coverage is limited to <b>120</b> visits per year.</i>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>Rehabilitation services:</b>  <b>Office</b> <i>Coverage for rehabilitative and habilitative physical therapy and occupational therapy combined is limited to <b>90</b> visits per year. Coverage for rehabilitative and habilitative speech therapy is limited to <b>90</b> visits per year.</i>  <b>Outpatient Hospital</b> <i>Coverage for rehabilitative and habilitative physical therapy and occupational therapy combined is limited to <b>90</b> visits per year. Coverage for rehabilitative and habilitative speech therapy is limited to <b>90</b> visits per year.</i>	0% coinsurance after deductible is met  0% coinsurance after deductible is met	20% coinsurance after deductible is met  20% coinsurance after deductible is met
<b>Cardiac rehabilitation</b> <b>Office</b>  <b>Outpatient Hospital</b>	0% coinsurance after deductible is met  0% coinsurance after deductible is met	20% coinsurance after deductible is met  20% coinsurance after deductible is met
<b>Skilled Nursing Care (facility)</b> <i>Coverage is limited to <b>120</b> days per year.</i>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>Hospice</b>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
<b>Durable Medical Equipment</b>	0% coinsurance after deductible is met	20% coinsurance after deductible is met

Covered Medical Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
<b>Prosthetic Devices</b>	0% coinsurance after deductible is met	20% coinsurance after deductible is met
Covered Prescription Drug Benefits	Cost if you use an In-Network Provider	Cost if you use a Non-Network Provider
<b>Pharmacy Deductible</b>	Combined with medical deductible	Not covered
<b>Pharmacy Out of Pocket</b>	Combined with medical	Not covered
<b>Tier 1 - Typically Generic</b> 30 day supply (retail pharmacy). 90 day supply (home delivery).	\$10 copay per prescription (retail) and \$10 copay per prescription (home delivery) after deductible is met	Not covered
<b>Tier 2 – Typically Preferred Brand</b> 30 day supply (retail pharmacy). 90 day supply (home delivery).	\$20 copay per prescription (retail) and \$20 copay per prescription (home delivery) after deductible is met	Not covered
<b>Tier 3 - Typically Non-Preferred Brand/Specialty Drugs</b> 30 day supply (retail pharmacy). 90 day supply (home delivery).	\$35 copay per prescription (retail) and \$35 copay per prescription (home delivery) after deductible is met	Not covered

**Notes:**

- If you have an office visit with your Primary Care Physician or Specialist at an Outpatient Facility (e.g., Hospital or Ambulatory Surgical Facility), benefits for Covered Services will be paid under “Outpatient Facility Services” which is generally coinsurance or coinsurance after your deductible is met.

*This summary of benefits is a brief outline of coverage, designed to help you with the selection process. This summary does not reflect each and every benefit, exclusion and limitation which may apply to the coverage. For more details, important limitations and exclusions, please review the formal Evidence of Coverage (EOC). If there is a difference between this summary and the Evidence of Coverage (EOC), the Evidence of Coverage (EOC), will prevail.*

## Get help in your language

Curious to know what all this says? We would be too. Here's the English version:

If you have any questions about this document, you have the right to get help and information in your language at no cost. To talk to an interpreter, call (844) 241-7085

Separate from our language assistance program, we make documents available in alternate formats for members with visual impairments. If you need a copy of this document in an alternate format, please call the customer service telephone number on the back of your ID card.

(TTY/TDD: 711)

**Arabic (العربية):** إذا كان لديك أي استفسارات بشأن هذا المستند، فيحق لك الحصول على المساعدة والمعلومات بلغتك دون مقابل. للتحدث إلى مترجم، اتصل على (844) 241-7085.

**Armenian (հայերեն).** Եթե այս փաստաթղթի հետ կապված հարցեր ունեք, դուք իրավունք ունեք անվճար ստանալ օգնություն և տեղեկատվություն ձեր լեզվով: Թարգմանչի հետ խոսելու համար զանգահարեք հետևյալ հեռախոսահամարով՝ (844) 241-7085:

**Chinese(中文):** 如果您對本文件有任何疑問，您有權使用您的語言免費獲得協助和資訊。如需與譯員通話，請致電(844) 241-7085。

**Farsi (فارسی):** در صورتی که سؤالی پیرامون این سند دارید، این حق را دارید که اطلاعات و کمک را بدون هیچ هزینه ای به زبان مادریتان دریافت کنید. برای گفتگو با یک مترجم شفاهی، با شماره (844) 241-7085 تماس بگیرید.

**French (Français) :** Si vous avez des questions sur ce document, vous avez la possibilité d'accéder gratuitement à ces informations et à une aide dans votre langue. Pour parler à un interprète, appelez le (844) 241-7085.

**Haitian Creole (Kreyòl Ayisyen):** Si ou gen nenpòt kesyon sou dokiman sa a, ou gen dwa pou jwenn èd ak enfòmasyon nan lang ou gratis. Pou pale ak yon entèprèt, rele (844) 241-7085.

**Italian (Italiano):** In caso di eventuali domande sul presente documento, ha il diritto di ricevere assistenza e informazioni nella sua lingua senza alcun costo aggiuntivo. Per parlare con un interprete, chiami il numero (844) 241-7085.

**Japanese (日本語):** この文書についてなにかご不明な点があれば、あなたにはあなたの言語で無料で支援を受け情報を得る権利があります。通訳と話すには、(844) 241-7085 にお電話ください。

**Korean (한국어):** 본 문서에 대해 어떠한 문의사항이라도 있을 경우, 귀하에게는 귀하가 사용하는 언어로 무료 도움 및 정보를 얻을 권리가 있습니다. 통역사와 이야기하려면(844) 241-7085로 문의하십시오.

**Navajo (Diné):** Dii naaltsoos biká'ígíí lahgo bina'ídiikidgo ná bohónéedzǫ́ dóó bee ahóót'i' t'áá ni nizaad k'ehǫ́ bee níl hodoonih t'áadoo bááh ilínígóó. Ata' halne'ígíí la' bich'í' hadeesdzih nínízingo kojí' hodiílnih (844) 241-7085.

**Polish (polski):** W przypadku jakichkolwiek pytań związanych z niniejszym dokumentem masz prawo do bezpłatnego uzyskania pomocy oraz informacji w swoim języku. Aby porozmawiać z tłumaczem, zadzwoń pod numer: (844) 241-7085.

**Punjabi (ਪੰਜਾਬੀ):** ਜੇ ਤੁਹਾਡੇ ਇਸ ਦਸਤਾਵੇਜ਼ ਬਾਰੇ ਕੋਈ ਸਵਾਲ ਹੁੰਦੇ ਹਨ ਤਾਂ ਤੁਹਾਡੇ ਕੋਲ ਮੁਫਤ ਵਿੱਚ ਆਪਣੀ ਭਾਸ਼ਾ ਵਿੱਚ ਮਦਦ ਅਤੇ ਜਾਣਕਾਰੀ ਪ੍ਰਾਪਤ ਕਰਨ ਦਾ ਅਧਿਕਾਰ ਹੁੰਦਾ ਹੈ। ਇੱਕ ਦੁਬਾਸ਼ੀਏ ਨਾਲ ਗੱਲ ਕਰਨ ਲਈ, (844) 241-7085 ਤੇ ਕਾਲ ਕਰੋ।

**Russian (Русский):** если у вас есть какие-либо вопросы в отношении данного документа, вы имеете право на бесплатное получение помощи и информации на вашем языке. Чтобы связаться с устным переводчиком, позвоните по тел. (844) 241-7085.

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**Tagalog (Tagalog):** Kung mayroon kang anumang katanungan tungkol sa dokumentong ito, may karapatan kang humingi ng tulong at impormasyon sa iyong wika nang walang bayad. Makipag-usap sa isang tagapagpaliwanag, tawagan ang (844) 241-7085.

**Vietnamese (Tiếng Việt):** Nếu quý vị có bất kỳ thắc mắc nào về tài liệu này, quý vị có quyền nhận sự trợ giúp và thông tin bằng ngôn ngữ của quý vị hoàn toàn miễn phí. Để trao đổi với một thông dịch viên, hãy gọi (844) 241-7085.

### It's important we treat you fairly

That's why we follow federal civil rights laws in our health programs and activities. We don't discriminate, exclude people, or treat them differently on the basis of race, color, national origin, sex, age or disability. For people with disabilities, we offer free aids and services. For people whose primary language isn't English, we offer free language assistance services through interpreters and other written languages. Interested in these services? Call the Member Services number on your ID card for help (TTY/TDD: 711). If you think we failed to offer these services or discriminated based on race, color, national origin, age, disability, or sex, you can file a complaint, also known as a grievance. You can file a complaint with our Compliance Coordinator in writing to Compliance Coordinator, P.O. Box 27401, Mail Drop VA2002-N160, Richmond, VA 23279. Or you can file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights at 200 Independence Avenue, SW; Room 509F, HHH Building; Washington, D.C. 20201 or by calling 1-800-368-1019 (TDD: 1- 800-537-7697) or online at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>. Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.



CBA Proposals 11.5.20 Attachments  
Item 5, Media



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900 Third Avenue, Suite 2100 • New York, NY 10022-4869

October 14, 2020

**Via Email bplum@proskauer.com**

Bernard M. Plum, Partner  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036

Re: EMG Side Letter

Dear Bernie:

In order to help maintain strong ties between the Philharmonic Symphony Society of New York (the "Society") and the Society's donors and subscribers, the parties have agreed, on a non-precedent setting basis, to a time-limited EMG solely in response to the special needs of the Society due to the current COVID-19 pandemic.

### **1. Term**

This EMG and all of the terms and conditions contained herein will expire and have no further force and effect as of 11pm on the expiration date of the successor agreement to the CBA currently in effect, which is set to expire on November 30, 2020,.

### **2. Use of the EMG**

Subject to paragraph 3, below, the EMG may be used for media work covered by the Integrated Media Agreement including renewing expired rights periods, releasing archival material for the first time, releasing newly-created material, and renewing expired rights on material recorded under the AV agreement.

### **3. Orchestra Committee Approval**

As per current practice regarding media, the Society must secure the prior approval of the Orchestra Committee (the "OC") for all projects involving the EMG. The parties understand and agree that the current 2020-2021 AFM and EMA COVID-19 Media Side Letter (the COVID-19 Media Side Letter) to the 2019-2022 IMA will be used for most new projects, with the EMG used exclusively for projects that are not covered by COVID-19 Side-Letter.



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#### **4. Amount of EMG**

Subject to the terms and conditions set forth herein, the Society may designate up to 8% of base scale wages each week as an EMG. This EMG will be “banked” each week for each member of the Orchestra. Before a project can be undertaken under this Agreement, there must be sufficient funds in the “bank” to cover it provided, however, that if necessary in order to allow certain projects to start before there are sufficient banked funds, and only with the OC’s prior approval, this EMG may be frontloaded. If the EMG is exhausted and additional monies are due for media projects, they will be paid to the musicians no later than the end of the season in which they were incurred.

#### **5. Pension**

Pension contributions will be made according to IMA rates on any media payments credited against EMG pursuant to this Agreement.

#### **6. Revenue Share**

Any revenue generated on projects for which musicians have received compensation from EMG as set forth herein will be shared according to the applicable revenue sharing provisions of the IMA.

#### **7. Subs and Extras**

For subs and extras paid by the week, up to 8% of base scale (\$236.16) will be designated as a media payment for IMA projects performed that week. The Society will pay subs and extras any required media wages that exceed 8% of base scale. For subs and extras who are paid for less than a full week's work, the amount considered as a media payment will be proportional to their compensation. By way of example, if a sub is paid one-half of the current weekly rate, 4% of base scale (\$118.08) will be designated as a media payment.

#### **8. Retired Musicians**

If the EMG is used to pay current members of the orchestra for projects using archival material, any musician who participated in the original recording who is not a current member of the orchestra (including retired members of the orchestra, subs and extras) will be paid the appropriate rates.

#### **9. Unauthorized Use**

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Should any recording utilized or created under the terms of this agreement ever be used in a manner that is contrary to any provision of this agreement, such infringing use shall be remedied consistent with the terms of Article VI of the IMA.

#### **10. Orchestra Approval**

In order to take effect, this agreement must be ratified by the musicians of the orchestra together with the 2020-2021 AFM and EMA COVID-19 Media Side Letter.

Very truly yours,

*Susan Davis*

Susan Davis

SD:nam

**Memorandum of Understanding New York Philharmonic, Local 802 AFM  
December 1, 2020**

**7. Education & Community Engagement Services**

Outline of procedures and limitations on activities other than standard rehearsals and concerts:

1. Activities will be limited to education and community engagement especially with respect to diverse communities. Mission statement to be created and included in agreement.
2. Orchestra Committee or other appropriate musicians' committee to be consulted and involved in planning on an ongoing basis for these activities. Orchestra Personnel will provide oversight of all scheduled services.

Best efforts will be made to identify engagement weeks as early as possible in the season planning process, e.g., in early drafts of the date book, meeting in Vail, etc. Minimum advance notice is 30 days.

3. An attempt will be made to evenly distribute the assignments of these weeks amongst the musicians, and consideration will be given to musicians interested in participating in these weeks. There will be communication of activities involved in specific weeks to solicit interest. The assignments will be appropriate to the individual musicians scheduled, with full consideration for the compatibility of ensembles
4. Musicians assigned will have the same number of days off in the week (consecutive or non-consecutive) as in the orchestra schedule that week.
5. Repertoire for the week will not exceed 70 minutes. If two performances are given on the same day at the same location, each concert will be limited to 45 minutes. Break time between performances will be at least 30 minutes, and no more than a total time of 150 minutes shall elapse from the beginning of the first performance to the finish of the second performance. These back-to-back performances will be considered as one service. Break times between performances of less than 30 minutes are subject to Orchestra Committee approval. There shall not be more than two services in the same day, and no more than one service in a day if it is a back to back performance service. Services shall occur on a schedule of either morning-afternoon, or afternoon-evening. Morning-evening services are subject to Orchestra Committee approval.
6. While there is no limit on the number of engagement weeks that can be scheduled for the orchestra as a whole, no musician will be mandated to work more than three such weeks in a season. A workweek shall not exceed six services, with at least one rehearsal. Deviations are subject to Orchestra Committee

**Memorandum of Understanding New York Philharmonic, Local 802 AFM  
December 1, 2020**

approval. No musician will be scheduled for consecutive weeks without their prior consent. Any musicians who participate in more than three weeks in a season will be granted one additional relief week, which may roll from season to season and to be scheduled in accordance with usual practices by the Personnel Manager.  
TAXABILITY ISSUE TO BE RESOLVED.

7. Mandatory engagement activities may not occur while on tour, except during residencies subject to the approval of the Orchestra Committee, and excluding Vail.
8. Unless as agreed by the Orchestra Committee, all venues will be within the five boroughs of New York City other than agreed residencies, and will showcase the musicians and the Philharmonic in the best possible light. Proper staff assistance and transportation will be provided. Activities will be performance based, though may include speaking. No musician will be asked to do anything that requires special training or certification, e.g., music therapy, etc. No musician will be required to perform individually.

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**11. Two Concerts Permitted on the Same Day**

1. Concerts can only occur in the same venue with the same personnel and program.
2. Concert times to be limited to no more than 90 minutes with or without intermission.
3. Minimum duration between concerts is four hours unless a shorter period is approved by the Orchestra Committee.
4. Orchestra or other appropriate Committee will be consulted in advance of scheduling.
5. There shall be no more than ten weeks per season with two concerts in the same day, no consecutive weeks with two concerts on the same day, and no week with two or more days with two concerts on the same day.

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**15. Disability, Sick, Maternity & Parental Leave**

Disability:

Revised Long Term Disability (LTD) section:

Members are eligible for coverage of 66% of minimum scale, currently a maximum of \$8,442 per month, after an elimination period of 180 days.

New language for Medical leave for Birthing Mother:

Birthing mothers are eligible for up to 12 weeks at full salary contingent upon completion of disability forms.

New language for Family Leave (including birth and non-birth mothers, fathers):

4 weeks at full salary to run concurrent with NYS Paid Family Leave plus an additional 8 weeks at minimum scale to run concurrent with NYS Paid Family Leave. NYS payments to reimburse Society.

New language for sick leave:

In the event of disability or illness of an Orchestra member in a season, the Society agrees to pay such member his full salary for THIRTEEN (13) weeks. If the member is deemed medically unable to work once full sick pay is exhausted, the Society will pay minimum scale to the member until the member has been medically unable to work for a total of 26 weeks.

In the event there is a separate, unrelated disability or illness after sick leave is exhausted, the member may receive payment of minimum scale for up to the period s/he would be eligible for long-term disability. The Society will require appropriate documentation and/or approval by the disability carrier to issue these payments.

Sick leave resulting from the COVID-19 virus shall not count toward the above limits.

Musicians are required to fully comply with all reasonable administrative requirements of the Society, third party providers, and the law. These requirements apply to all sick, disability, and family leaves.

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**16. Doubling**

At least once per season, the orchestra committee will meet with the Orchestra Personnel Manager and a person designated by the Artistic Planning department to determine the need for non-traditional doubling. The library shall gather all available scores that include non-traditional instruments (including bespoke, 3D printed, or other custom instruments) or other percussion instruments to be played by musicians outside of the percussion section. At said meeting, the instruments that fall outside of a traditional double shall be evaluated to determine the relative level of skill necessary to perform on the instrument in question at a level expected of a musician of the New York Philharmonic. The criteria to be considered shall include but not be limited to:

- Does the instrument need to be played in strict rhythm (i.e., is the accuracy of timing of an entrance important)?
- Are there rhythmic patterns that must be executed with other members of the ensemble?
- Does the instrument require a level of skill to produce the appropriate sound that requires additional hours of practice?
- Is the passage exposed enough to give reasonable concern of disrupting a performance if not performed adequately?

If any of the above criteria are met and it is determined that the instrument is considered a non-traditional double, every musician performing said non-traditional double shall be compensated at the specified rate for doubling. Said doubling will be calculated from base scale as opposed to individual contract rates.

In the event that there is disagreement between the orchestra committee and Society, a secret ballot vote shall be taken among four members of the orchestra committee and three members designated by the Society. The majority vote shall determine whether or not doubling shall be paid.



## EXHIBIT B

### **Auditions (June 13, 2018)**

#### **Introduction**

The fundamental idea behind this new audition process is that to be successful in the orchestra a new player needs the support of the Music Director, the audition committee and a substantial part of the section they are joining. The process is designed to allow support for strong candidates to build over the three rounds of the audition, with a trial period considered as part of the final round. The audition committee's "vote to employ" will come at the end of this process when in most cases committee, Music Director and section will have had the opportunity to observe the candidate(s) perform in the orchestra. After the audition committee has approved a candidate, the Music Director will make the final decision as to whether that candidate is offered a position.

#### **1. General**

- a. If all parties concerned are in agreement it will be possible to make changes to the audition process on a trial basis.
- b. It is the policy of the Society to attempt to engage the best performers available at the salaries that the Society can offer. Notice of impending openings will be advertised nationally and internationally. Auditions will be held, and all applicants who so wish will be given at least one audition.
- c. The Audition Committees referred to hereinafter shall not include any Musician who is either a candidate for that audition or will be replaced as a result of that audition, or any Musician who has received a notice of non-renewal or dismissal, or any Musician who has not completed their Probationary Period. Auditions will be administered by the Personnel Manager. Disputes about audition procedures will be communicated to the Orchestra Committee and the Artistic Advisory Committee and resolved by consensus by these two committees, a spokesperson of the Audition Committee and the Personnel Manager.
- d. Auditions shall be by means of a process that may include preliminary, semi-final and final auditions, and trial periods.
- e. All auditions will be anonymous and all rounds shall be held behind a screen with the exception of the final round.
- f. During the preliminary and semi-final rounds it is the intent of the parties that Committee members express their opinions about individual candidates by voting rather than by discussion. The Committee will be seated so as to discourage conversation. If at any time a member of the Audition Committee feels discussion is necessary, a motion can be made to have discussion. A secret ballot vote will be taken, simple majority needed to approve. Any member of the Committee can opt out of the discussion,

leaving the room if so desired. Discussion of candidates shall be directed to the Personnel Manager.

The voting and all discussions taking place during and following auditions are confidential and shall not be disclosed outside of the Committee.

g. Candidates will be informed that the Committee may dismiss a candidate at any time during the audition process.

h. No more than 7 hours of auditions will be scheduled on a day with an evening concert.

i. All members of Audition Committees shall receive payment for their services at the rate of 2% of minimum scale per hour.

j. No use of electronic devices during auditions.

k. Any member of the orchestra may audit any audition. They must sit apart from the committee in a location designated by the Personnel Manager and may not take part in any discussion or vote. In the event that their behavior is disturbing to either the Audition Committee or the candidates, the Personnel Manager may require them to leave. Any comments on the process should be directed to the Personnel Manager and not to a member of the audition committee.

l. Voting will be by secret ballot in all rounds, to take place before any break. Simple majority needed to advance. The Personnel Manager will report to the Audition Committee which candidates are advanced, the actual vote tally shall remain confidential.

m. Voting in section Auditions

When the section with the opening is a minority of the Audition Committee, (for example, the 3 bassoons of a 9 member committee) the Personnel Manager will mark their Ballots as being of that section. These marked ballots will be used for all rounds including any possible "vote to employ."

If all members of that section vote for a candidate, that person will be advanced to the next round even if they did not receive the majority vote. If only two members of the section with the vacancy are present at the audition their choices for advancement need at least one other vote. If only one member of the section with the vacancy is present at the audition their choices for advancement need at least two other votes. If a candidate is advanced by majority vote to the final without any votes from the section, the Personnel Manager will call for a discussion.

## **2. Make –up of Committees**

An Audition Committee shall be made up of at least 9 Musicians.

Two alternates will be chosen in case there are Committee members who are unable to fulfill their duties

Every effort will be made to have a minimum of 9 Committee members at every audition

If it is not possible to form a 9 person committee from the instrument group with the vacancy (for example percussion, or brass), members of that instrument group who will serve on the committee should be consulted as to who else should be invited to serve. In case of disagreement there may be a secret ballot vote.

Committees should be filled in the following order:

#### Brass

Members of the section with the opening, other brass players, members of the woodwind and/or percussion sections as needed

#### Woodwinds

Members of the section with the opening, other woodwind players, members of the horn section and other brass players as needed

#### Percussion

Members of the percussion section, Harp, members of the brass, woodwinds and string sections as needed

#### Brass, Woodwind and Percussion Principals

When players from other instrument groups are needed to make a 9 person committee as described above, these additional members should be Principals if possible

#### Harp

Principals from all instrument groups and other musicians as needed

#### Library

Members of the library, 1 member of each instrument group and other musicians as needed

#### Section Strings

##### Violin

5 section players from 1<sup>st</sup> and 2<sup>nd</sup> violin sections, all titled players, at least 1 additional string Principal

All tenured section players will be informed when an audition is planned. Those who are interested in serving on the audition committee will inform the Personnel office. Out of this "pool" names will be picked randomly until the following criteria have been met:

2 players who did not serve on the previous committee and who have been in the orchestra for at least 15 years

2 players who did not serve on the previous committee and who have been in the orchestra for less than 15 years

1 player who served on the previous committee

As alternates, any 2 players

Viola

5 section players, all titled players, at least 1 additional string Principal

Cello

5 section players, all titled players, at least 1 additional string Principal

Bass

5 section players, all titled players, at least 1 additional string Principal

Additional section players from the section with the vacancy and from adjoining string sections may be used if needed

Principal Strings

As many string Principals as possible should be included on the Committee

### **3. Auditioning Procedures**

Pre-preliminary

The Audition Committee will choose a Chairperson. This person should normally be a member of the section with the opening, the Principal for section positions, and a member of the section for a Principal position.

The Audition Committee Chair, consulting with members of the section involved when appropriate, will draw up a master repertoire list and also make recommendations for which excerpts should be assigned to each round. Attention should be paid to the length of material assigned to each round. The length of the master list should reflect the amount of repertoire needed for the audition.

The full Audition Committee will review the repertoire list.

In the case of a Principal position, the other Principals of the instrument group should be consulted.

For all non-string auditions, candidates should be given the master repertoire list for all rounds and the specific excerpts required, including the order, for the preliminary and semi-final rounds as soon as possible. Candidates may be asked to sight read as part of the final. For all string auditions, candidates should be given the master repertoire list

for all rounds and the specific excerpts required, including the order, for the preliminary round only, as soon as possible. Repertoire for the semi-final will be announced on the day of the audition. Candidates may be asked to sight read as part of the final.

The Audition Committee will review resumes with the Personnel Manager. If all members of the Committee are not available, a minimum of 3 members of the audition committee, including whenever possible the Principal of the section involved, may review resumes with the Personnel Manager. Initially all applicants will be offered their choice of a live preliminary or a tape preliminary audition. In the event that the number of requests for live auditions exceeds the available time for preliminaries the Audition Committee will decide by majority vote which applicants will be offered live auditions. Letters of recommendation may be considered at this time.

Criteria to be invited to the semi-finals as follows:

applicants who have been finalists in NYP auditions during the previous 5 years will be invited to the semi-finals. Applicants who are regular substitutes, or who hold positions in major orchestras may be invited to the semi-finals by majority vote of the full Audition Committee.

This vote may be by secret ballot if there is a request from any member of the committee. (Major orchestras defined as top 7 American orchestras and overseas orchestras of similar standard)

NYP Musicians who choose to audition for possible advancement within their section will be invited to the final.

For Principal and solo positions only, the Music Director and the Audition Committee may invite candidates to the final.

#### Preliminary

Before preliminaries the Personnel Manager will instruct the committee that they will have 2 more opportunities after this round to vote. If there is good potential in a candidate's playing please consider a yes vote even if there are some imperfections.

The repertoire for the preliminary round will be the same for live and taped auditions. Best efforts will be made to notify all candidates of this repertoire at the same time. Voting will be by secret ballot. Simple majority needed to advance.

#### Listening sessions for tape preliminary

During tape auditions, committee members will communicate with the Personnel Manager through pressing a button which will make a light come on at the Personnel Manager's station. Each committee member will push this button when they have heard enough to make a decision. When the majority of the lights are on, the Personnel Manager will stop the audition.

By pre-arrangement, during concertos or other solo pieces, this light signal may be used by the leader of the audition committee to inform the Personnel Manager that the committee is ready for the next excerpt.

#### Live Auditions

There will be a minimum number of minutes (5) or minimum number of excerpts (3) from either solo or orchestral repertoire for each live audition.

During live auditions, committee members will communicate with the Personnel Manager through pressing a button which will make a light come on at the Personnel Manager's station. Each committee member will push this button when they have heard enough to make a decision. When the majority of the lights are on, the Personnel Manager will stop the audition as soon as the minimum time or excerpt requirements have been met.

By pre-arrangement, during concertos or other solo pieces, this light signal may be used to inform the Personnel Manager that the committee is ready for the candidate to move on to the next excerpt.

During live auditions it may be necessary to ask a candidate to repeat an excerpt, for example if tempo, dynamics or articulation are incorrect. During the solo piece it may be desirable to skip to the cadenza. The Chair of the audition committee will make these decisions and speak on behalf of the committee directly to the candidate.

#### Semi-final

Before semi-finals the Personnel Manager will instruct the committee that they will have 1 more opportunity after this round to vote. Please consider advancing candidates who you feel are strong players with good musical integrity even if you have some concerns.

Candidates will be renumbered at the beginning of the semi-final round. The semi-final may consist of more than one round. Advancement to a possible 2<sup>nd</sup> part of the semi-final will be by secret ballot, simple majority needed to advance. No discussion, except as described in 1f. All parts of the semi-final will be screened including any chamber music and playing with members of the relevant section. Members of the Audition Committee who play with the candidates will participate in the voting by secret ballot, simple majority needed to advance to final. For string auditions only, whenever a candidate is one vote short of advancement to the final, the committee will be informed and after discussion there will be a revote. Otherwise no discussion, except as described in 1f.

## Final Round and Trial Periods

Before the final round the Personnel Manager will instruct the committee that trial periods are an important part of this audition process. Please use them to resolve any doubts you might have about a strong candidate.

Music Director will be present for the final. There may be discussion as needed throughout the final round.

In advance of the final, the Music Director and Audition Committee Chair will discuss repertoire, including the possibility of chamber music or playing with the relevant section. There may be repertoire changes made during the final if the Music Director and Audition Committee Chair consider it appropriate.

There will be no screen for the final round. Members of the audition committee may review their notes from previous rounds before hearing the candidates if they so wish. All decisions regarding dismissal of candidates before the end of the audition will be made after full discussion and require the approval of the Music Director and a majority of the committee. A vote by secret ballot will be taken if there is a request from the Music Director or anyone on the committee.

The audition should continue until the Music Director and committee feel they have heard enough to decide which candidates should be offered trial periods. There will be a non-binding vote by secret ballot to determine the committee's level of interest in offering trial periods to each candidate. A majority vote is not needed to offer a trial. This vote is a tool to help direct the discussion.

More than one candidate per opening may be offered a trial. Length of trial periods will be decided by the Audition Committee and Music Director in consultation with the Personnel Manager and with the final approval of the society. Trial periods should be considered part of the audition and may only be skipped under exceptional circumstances. See below for examples.

### **"Vote to employ"**

After the Trial period(s) the Music Director and Audition Committee will meet to discuss. If a decision is made to offer a position to one or more candidates, the Personnel Manager will ask for a "vote to employ," a secret ballot vote by the audition committee.

Before the "vote to employ" the Personnel manager should instruct the committee that if they consider the candidate to be at the level the New York Philharmonic requires please vote yes.

A simple majority yes vote is required to qualify candidates as acceptable for the NYP. (In the case of section auditions where the section with the vacancy is in the minority,



this must include at least 50% of this section on the committee. If only one member of the section with the vacancy is on the committee and votes no, there must be at least two other no votes to disqualify the candidate.) The final judgment in filling the vacancy shall rest with the Music Director.

Circumstances when a trial period may not be necessary:

1. Candidates for section string positions who are employed and have difficulty getting released for a trial period.
2. Candidates for any opening who have already played in that position in the NYP as a substitute for an extended period.

When a decision is made to offer a position to a candidate without a trial period the "vote to employ" as described above will require a majority plus 1 to qualify a candidate as acceptable for the NYP

#### Unsuccessful Auditions

In the event of a position not being filled, either because no candidate won the position, or because the successful candidate did not get tenure, the Audition Committee and the Music Director will discuss whether to extend the audition, by inviting finalists to a trial period, or new candidates to a final audition with trial period, or to call a new audition. The decision to extend may be made only once per audition and requires a majority vote of the Audition Committee.

After a minimum of 2 unsuccessful auditions for the same position, the Audition Committee and Music Director may choose to meet with the Chairpersons of the Artistic Committee and Orchestra Committee and the Personnel Manager to discuss and decide on an alternate procedure.

#### Auditions without Music Director

In the event there is no one in the position of Music Director or Music Director Designate, a decision may be made to hold a section audition, in which the vote to employ will require a majority plus 2 which must include the Principal, to qualify a candidate.

On the rare occasion that it proves impossible to schedule a section audition in a timely fashion with the Music Director or Music Director Designate, a decision may be made to hold a section audition without a Music Director or Music Director Designate present at the final audition. This decision will be made with the written consent of the Music Director or Music Director Designate and the vote to employ will require a majority plus 2 which must include the Principal, to qualify a candidate.



**Jaap van Zweden**  
Music Director

**Peter W. May and Oscar L. Tang**  
Co-Chairmen

**Deborah Borda**  
Linda and Mitch Hart President and CEO

## EXHIBIT C

As of December 1, 2020

Reference is made to the collective bargaining agreement between Local 802, AFM and the Philharmonic-Symphony Society of New York, Inc. (the Philharmonic) dated as of December 1, 2020. The following clarifies the understanding of the parties with respect to two items:


1. Section VI, C, 3 (Education and Community Engagement Activities other than standard rehearsals and concerts): It is understood that such activities will not take place in the homes of donors or potential donors.
2. Section XII, A (Media; Radio): It is understood that the rates and provisions described therein will not apply during the Term of the agreement and will be governed by the applicable portions of the other agreements referenced in Section XII.

For Local 802, AFM:

DocuSigned by:  
  
DFB860B5365143F...

Adam Krauthamer

For the Philharmonic:

DocuSigned by:  
  
DFB860B5365143F...

Deborah Borda

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